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ABSTRACT

The text of Part 1 of a Senate hearing on the Tobacco Product Education and Health Protection Act of 1990 is reported in this document. It is noted that this act would amend the Public Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to disclose and restrict additives to such products, and to require labeling of such products to provide information concerning such products to the public, and for other purposes. In an opening statement, Senator Edward M. Kennedy discusses the problems of tobacco smoking and the need for federal regulation. Statements by Senators Orrin G. Hatch, Frank R. Lautenberg, and Bill Bradley are included, as well as a statement by Congressman Richard J. Durbin. The testimony from these individuals is included: (1) Louis W. Sullivan, Secretary of Health and Human Services; (2) Sister Mary Madonna Ashton, Commissioner of Health, Minnesota Department of Health; (3) Alan Blum, Department of Family Medicine, Baylor College of Medicine, Houston, Texas; (4) Charles O. Whitley, counsel, The Tobacco Institute; (5) Floyd Abrams, counsel, The Tobacco Institute; (6) Tom Boggs, Patton, Boggs and Blow, representing Freedom to Advertise Coalition; and (7) Scott D. Ballin, Coalition on Smoking or Health, Washington, D.C.. Prepared statement are included from these witnesses and the Association of National Advertisers, Inc.; The Smokeless Tobacco Council, Inc.; the National Automatic Merchandising Association; the U.S. Hispanic Chamber of Commerce; Cigar Association of America, Inc.; and the Finding For The Study of Teenage Cigarette Smoking and Purchasing Behavior. (ABL)

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S. HRG. 101-707, PT. 1

TOBACCO PRODUCT EDUCATION AND HEALTH PROTECTION ACT OF 1990

ED 323446

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1883

TO AMEND THE PUBLIC HEALTH SERVICE ACT TO ESTABLISH A CENTER FOR TOBACCO PRODUCTS, TO INFORM THE PUBLIC CONCERNING THE HAZARDS OF TOBACCO USE, TO DISCLOSE AND RESTRICT ADDITIVES TO SUCH PRODUCTS, AND TO REQUIRE LABELING OF SUCH PRODUCTS TO PROVIDE INFORMATION CONCERNING SUCH PRODUCTS TO THE PUBLIC, AND FOR OTHER PURPOSES

FEBRUARY 20, 1990

Part I

Printed for the use of the Committee on Labor and Human Resources

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TOBACCO PRODUCT EDUCATION AND HEALTH PROTECTION ACT OF 1990

TUESDAY, FEBRUARY 20, 1990

U.S. Senate,
Committee on Labor and Human Resources,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., in room SD-430 Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman of the committee) presiding.

Present: Senators Kennedy, Hatch, Dodd, and Durenberger.

Opening Statement of Senator Kennedy

The Chairman. Good morning. Welcome to the hearing of the Committee on Labor and Human Resources on the Tobacco Product Education and Health Protection Act of 1990.

One thousand more Americans will die today from diseases caused by tobacco products. Yet, the tobacco industry will spend $6.9 million more today on advertising and promotion to encourage more Americans to try tobacco products.

Tobacco companies claim that their advertising is intended only to induce brand switching, rather than to recruit new smokers. But only 10 percent of smokers switch brands each year. Because so many smokers die and so many others stop, 6,000 new smokers must be recruited every day for the industry merely to maintain the status quo.

Two thousand of the new smokers will be young women. A disproportionate number will be minorities. The industry broadly promotes its products, but also specifically targets women and minorities. The Virginia Slims Tournament in Washington this week is a local reminder of the prevalence of the industry's strategy.

Two new cigarette brands introduced in the past year are designed for women—Superslims and Newport Stripes. The marketing strategy is so brazen that the ads themselves confess that they are targeted on women. Last week we learned that the deadly campaign continues as reports of a new effort to promote the "Dakota" cigarette surfaced.

Only the fearless intervention of Secretary Louis Sullivan, who is with us this morning, blocked the insidious scheme of R.J. Reynolds to market a new brand of cigarettes called "Uptown," targeted at blacks. The marketing strategy was particularly insidious because of the excessive incidences of cancer, heart disease, and stroke that minorities already suffer.

Women are also suffering more extensively from tobacco-related diseases. In 1950, only 3 of every 100 women with cancer had lung cancer. Today the number is 20 of every 100 women—nearly a seven-fold increase. Lung cancer is now the No. 1 cause of cancer deaths among women, and other smoking-related cancers are also increasing.

Industry representatives maintain that everyone already knows the dangers of smoking. But surveys prove that vast numbers of citizens, especially the young, are unaware of the true nature of the risk.

To deal with these abuses, I joined with other Senators last November to introduce the Tobacco Product and Health Protection Act of 1990, S. 1883. It is a realistic attempt to provide greater Federal leadership in dealing with these problems.

The approach we take in this measure is two-fold: greater public education, more truth in advertising about the risks of smoking, and more effective Federal regulation of tobacco products.

Smoking is public health enemy No. 1 in America today. We are not serious about public health unless we get serious about reducing tobacco use.

It may well be a challenge to persuade the present anti-regulation administration that more regulation is needed. But we are not talking about excessive Federal regulation, but minimal, garden-variety standards that apply to all products. At present, there is no law which requires that tar and nicotine content be disclosed to the public. Most packages of cigarettes do not display that information.

Perrier water was pulled from the shelves recently in response to an EPA-FDA action when it was discovered that it had 16 to 26 parts per billion of benzene, while the 1986 surgeon general's report noted that the benzene content in a range of cigarettes varied from 11,000 to 43,000 parts per billion, or almost 2,000 times the content of benzene in Perrier water.

The consumer has a right to know the key ingredients and additives to a pack of cigarettes when they purchase the product.

Finally, I want to emphasize one other point. This legislation is not aimed at tobacco growers or tobacco-producing States or the thousands of decent, hardworking Americans who earn their livelihood by raising tobacco. As the legislation before this committee moves through the Senate, the farm bill of 1990 will also help us, and we will have an excellent opportunity to address this concern.

I want to welcome Secretary Sullivan, who will testify. And after our distinguished colleagues, several Members of the Congress are here. They have been the real leaders in this effort, and we look very much forward to their testimony.

Senator Lautenberg has been tireless and extremely effective in bringing about some important legislative changes in the Senate. Senator Bradley has over a number of years offered imaginative and creative proposals in terms of the tax considerations of our Internal Revenue Code and in moving funding to expand education for the young people of this country. And Congressman Durbin has been a leader in the House of Representatives in fashioning and shaping a bipartisan coalition in the House of Representatives that has made a very important contribution in this battle as well.

Before hearing from our colleagues, we want to recognize Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. I would like to welcome everybody here this morning who is going to testify. We certainly appreciate the testimony that will be given this morning.

Mr. Chairman, I would like to commend you for holding this hearing this morning. The use of tobacco products in America and their adverse health effects were first brought to our attention by Surgeon General Luther Terry. Dr. C. Everett Koop, our last surgeon general, strongly promoted this legacy when he was surgeon general.

Tobacco products account for over 360,000 deaths a year. The lung cancer death rate in women has now surpassed the death rate for any other cancer. More and more, the cigarette market consists of young women, minorities, and the less educated.

I recently received a letter from Katherine Manning, president of the Coalition for a Tobacco-Free Utah, which represents 20 organizations working for a tobacco-free Utah. In her letter, Katherine mentioned the commitment of not only Utah's Governor Bangerter, but also the Governors of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, and Wyoming in their willingness to accept the Rocky Mountain Tobacco-Free Challenge's commitment to eliminate tobacco-related illness and death.

Their goals are: 50 percent reduction in tobacco use by adults and youth; 25 percent reduction in deaths related to tobacco; and 50 percent reduction in consumption of all tobacco products.

Mr. Chairman, I would ask that the Coalition's full letter be made part of the record of this hearing.

The CHAIRMAN. It will be so included.

[The letter from Coalition for a Tobacco-Free Utah (with an attachment) follows:]

LETTER FROM COALITION FOR A TOBACCO-FREE UTAH

Salt Lake City, Utah
February 12, 1990.

The Honorable ORRIN G. HATCH,
U.S. Senate,
Washington, DC 20511

DEAR SENATOR HATCH: I am writing in support of the "Tobacco Product Education and Health Protection Act of 1990" (S. 1883). The area of tobacco regulation and education needs considerable attention. We appreciate the legislative effort to control the leading preventable cause of death in this country.

The governor of Utah, Norman H. Bangerter, has agreed with the governors of Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, and Wyoming to accept the Rocky Mountain Tobacco-Free Challenge's commitment to eliminate tobacco-related illnesses and death. The Coalition For A Tobacco-Free Utah, a large group of organizations, has also adopted the same goals for the year 2000.

—50 percent reduction in tobacco use by adults and youth
—25 percent reduction in deaths related to tobacco
—50 percent reduction in consumption of all tobacco products

Tobacco use causes nearly 400,000 deaths per year in the United States, the equivalent of over 1,000 deaths per day. Not only is the mortality rate of concern but the economic losses are enormous. In 1985, the private and public sectors spent approximately $22 billion on smoking-related illnesses and $43 billion on economic losses. Local and worksite smoking cessation programs could target smokers and increase our economic resources by decreasing smoking and improving health.

The tobacco industry must attract 5,000 new children and teenage smokers daily to replace those who stop smoking or die of smoking-related diseases or other causes. In 1986, the tobacco industry spent $2.4 billion on tobacco advertising, and promoting products in the U.S. To counter the tobacco industry an advertising campaign must be put into effect to discourage tobacco use.

Sixty percent of all smokers begin by age 14 and 90 percent by age 20. Young people become addicted before they are mature enough to make an informed decision. The Coalition For A Tobacco-Free Utah was instrumental last year in passing legislation for smoke-free schools during school hours and prohibiting the sale of tobacco products in vending machines, which makes cigarettes easily accessible to teenagers. However, the ability to enforce the laws can be difficult without incentives and support from a Federal agency.

The proposed legislation on tobacco education would provide support to law enforcement, a counter advertising campaign, worksite intervention programs, encourage smoke-free schools, and discourage the use of tobacco and its harmful effects. I find that the "Tobacco Product Education and Health Protection Act of 1990" (S. 1883) would greatly enhance our efforts in Utah as a coalition.

I would appreciate your office keeping me informed of any changes in the proposed bill. If I can be of any assistance, please let me know.

Sincerely,

KATHRYN MANNING, R.T.P.
President,
Coalition For A Tobacco-Free Utah

Utah Environmental Health Association

Utah Medical Association

Utah Nurses' Association

Healthy Mothers/Healthy Babies

Utah Public Health Association

Utah Regional Cancer Center

Utah Society for Respiratory Care

Utah State Office of Education

Utah Department of Health

With a portion of the cigarette excise tax revenue, the Utah Department of Health, in conjunction with the State's 12 local health departments, has developed the Tobacco-Free Utah

COALITION FOR A
TOBACCO-FREE UTAH

Utah Hospital Association

American Heart Association

American Lung Association

Cancer Information Service of Utah

Utah Parent Teacher Association

Local Health Officers Association

Lung Health Study

Smoke-Free Class of 2000

Utah Cancer Registry

American Cancer Society

Activities:

All participating agencies will work together in an unified effort to accomplish our goals by working with youth in education, adult cessation programs and legislative issue

Goals:

- A 50% reduction of tobacco use prevalence as reported by adults 18 years and older as compared to 1988 reported use.
- A 50% reduction of tobacco use prevalence as reported by adolescents 12-17 years as compared to 1988 reported use.
- A 25% reduction/decrease in tobacco attributable mortality compared to 1988.
- A 50% decrease in public consumption of tobacco products from 1988 as perceived by state residents.
- The existence of Clean Indoor Air Acts in all states which truly eliminates environmental tobacco smoke in public places and worksites.

For Additional Information Call:

Kathryn Manning Chairperson	581-5052
Ron Bouck Vice Chairperson	364-1515
Rosemary Dibble Vice Chairperson	581-8407
Chris Chalkley Secretary	538-6120
Jeff Childs Treasurer	581-5864

Senator HATCH. I am pleased that we have a wide array of witnesses this morning who will address public health, the tobacco industry, and advertising issues. However, I would like to point out to those who disagree with the tobacco industry on the use of tobacco that the laws restricting their rights to advertise a legal substance should not be taken lightly. There are many who strongly believe that the industry has a constitutional right to advertise and seek market share for a legal product regardless of whether we agree with the use of the product.

Regardless, I would like to point out that, because of the escalating cost to the public in lost productivity and death from the effects of tobacco, I support the interests of those who are interested in providing better information to America's youth. Sixty percent of all smokers begin by age 14 and 90 percent begin before age 20. Successful education programs help our youth delay making a decision regarding tobacco use until they become adults, a time when they can fully understand the risks.

In addition, I support efforts to help those who want to quit. We need better education and better public information for those in school. I look forward in particular to hearing from our colleagues in the Congress. I appreciate their leadership.

A number of us worked under Senator Lautenberg's leadership last year to ban smoking on domestic airlines. I want to compliment him for the work that he did there, and I appreciated working with him and the leadership that he provided.

But I also look forward to hearing Dr. Sullivan, our Secretary of Health and Human Services, discuss the apparent problem we have in reaching those who are still in school. As was reported last week, almost 19 percent of all high school seniors report that they smoke cigarettes daily, a number that has held steady for the last 5 years. And I understand the rate is highest for those who do not plan to continue their education beyond high school. I suspect that the rate of use is even higher for those who drop out of school.

Mr. Chairman, I would like to recognize Secretary Sullivan for his courageous views against the selective marketing of tobacco products to minorities and women.

I have to say, Mr. Secretary, I share your outrage against those who would target those groups of people who are vulnerable and who may be less capable of making decisions and who are less educated consumers. Your advocacy has meant a lot to the country and will mean a lot in the future. I want to compliment you for it in advance.

Mr. Chairman, I have been appointed by the Senate to go to a U.N. to the special set of anti-drug meetings. So I have to leave fairly early today. I would like to let that be known here so that nobody will feel that I am leaving without paying strict attention to all of the testimony that will be given today.

Thank you.

The CHAIRMAN. Thank you very much, Senator Hatch.

We will follow our historic procedures of going by seniority unless there is a conflict.

Senator Lautenberg, we know you have a conflict. So we will be glad to recognize you first.

Senator LAUTENBERG. Thank you, Mr. Chairman.

The CHAIRMAN. I understand that your legislation is going into effect on Sunday next. You ought to take a lot of satisfaction from it, and we again congratulate you and look forward to your testimony.

STATEMENTS OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM NEW JERSEY, ACCOMPANIED BY HON. BILL BRADLEY, A U.S. SENATOR FROM NEW JERSEY, AND HON. RICHARD J. DURBIN, A REPRESENTATIVE IN CONGRESS FROM ILLINOIS

Senator LAUTENBERG. I thank you very much, Mr. Chairman, and I thank my colleague Bill Bradley for permitting me to jump the seniority rung in this instance and go first, and, Mr. Chairman, to thank you for the leadership you have provided on health issues for so many years. Few in the Congress have ever demonstrated the commitment to improving health for the uninsured, for the poor, for those who need assistance, and particularly noteworthy is your battle for funding for AIDS and the AIDS relief bill, and we are proud to be here with you and thank you very much for holding this hearing.

And Senator Hatch and I have worked together on several issues, in particular the no-smoking issue on airplanes, and our work together has been very satisfactory, very helpful, and, I think, responsible for the kind of smooth path that we found through the Senate, of course with our colleague from across the way, Congressman Durbin. It has been a very worthwhile effort, and on Sunday those who care about flying and breathing easily will have the opportunity to do so. So we look forward to that.

Mr. Chairman, the Tobacco Product and Health Protection Act has one simple goal: to save American lives by enlisting the Federal Government in the fight against tobacco addiction, particularly among our children, women, and minorities. We cannot sit idly by any longer while tobacco companies cynically devise marketing campaigns to lure the most vulnerable groups into a life of nicotine addiction.

As more and more people quit, the tobacco industry has stooped lower and lower in order to keep their cash registers ringing. The Federal Government needs to make a concerted effort to get the truth out about the grave health consequences of smoking tobacco. And the truth is that smoking cigarettes kills.

For too long our Government has been complacent. For too long it sat on the sidelines and watched tobacco products slowly drain the life out of our citizens. We need to fight the battle on all fronts.

Just to replace those who quit the tobacco industry needs to hook 6,000 new smokers a day. Now, where does the industry turn for its profits? Senator Hatch, you mentioned it. It turns to the urban poor. "Uptown" was only the most blatant of its racial appeals. The industry turns to female teenagers. "Dakota" is the kind of a product they would sell. And most reprehensible of all, the industry has turned to our kids.

Mr. Chairman, we are losing the battle to prevent our youngsters from smoking. The facts speak for themselves. According to the surgeon general's 1989 report, approximately 80 percent of the smokers started before the age of 21. One out of four high school seniors who ever smoked began when he was 12 years old. The earlier a young person begins using tobacco the harder it is for them to kick the habit.

In many ways, the fight against tobacco addiction is like the fight against drug addiction. Drugs are addictive. So is tobacco. Drugs are fatal. Perhaps more often is tobacco. It leads to cancer and lung disease and heart disease, and we know that it takes nearly 400,000 precious American lives each year.

We are fighting an all-out war to keep our kids off drugs. We have targeted resources for drug education. We have appointed a Federal drug czar, and we are trying to get more money into our cities and States to fight drug abuse. But what have we done to keep our kids away from tobacco? What have we done to prevent our children from taking a fatal first puff and becoming addicted for life? Obviously not enough. We see it: 11-, 12-, 13-year-olds, smoking cigarettes in our schools and shopping malls, but the Federal Government hasn't made a concerted effort to stop it.

We see 9-year-old kids buying cigarettes from vending machines and in our stores, but we have not acted to prevent it. We see children being given free cigarette samples, but we have not insisted that it stop.

If we saw a 10-year-old kid holding a gun to his head, surely we would intervene to save that youngster's life. We should have the same reaction when it comes to our kids smoking cigarettes.

We need to act aggressively and intervene to prevent young kids from getting hooked. The Tobacco Product and Health Protection Act of 1990 would provide valuable resources to help in the battle against addiction among our young people. It would authorize two new incentive grant programs to encourage States to enact and enforce laws to limit youth access to tobacco products.

These incentive grants are based on legislation I introduced last year, the Adolescent Tobacco Prevention Act, bill number S. 1528.

First, the bill would create incentive grants for States that enact and enforce laws prohibiting the sale of tobacco products to a minor under the age of 18. States would be encouraged to ban the sale of tobacco products in vending machines unless the presence of minors is not allowed on the premises where the machines are located.

Second, the bill would create an incentive grant program to get States to make elementary and secondary schools smoke-free.

In the coming days I would like to work with the committee on ways to improve the incentive grant programs in other sections of the bill to address youth access.

We need to act quickly and decisively to get this legislation passed. The need for a comprehensive Federal policy on smoking couldn't be greater. The Government must play an active role in sending out a strong, clear message to the Nation that smoking kills. And we must provide the resources to help prevent would-be smokers from becoming addicted.

Our children and their families deserve no less, and I look forward to working with the committee and you, Mr. Chairman, on this important piece of legislation. Once again thank you for permitting me to testify.

The CHAIRMAN. Thank you very much, Senator Lautenberg.

Senator Bradley.

Senator **Bradley**. Thank you very much, Mr. Chairman.

Let me express to you my appreciation for holding the hearing and for taking control of this issue in the areas under the committee's jurisdiction.

Senator Lautenberg hit some of the high points. Tobacco is the single biggest health hazard facing the country today. Three hundred ninety thousand people die each year because of tobacco use. Smoking contributes to one-third of all cancer deaths, a quarter of all deaths due to coronary heart disease. Smoking contributes significantly to high infant mortality rates.

And yet, it is sad to say that 34 percent of the high school seniors in this country do not believe a pack of cigarettes a day causes a risk of harm. One-third of the women of child-bearing age who do not know that smoking causes still births and nearly 30 percent of the smokers do not know that smoking causes heart disease.

That is why the bill that you have introduced is so important, Mr. Chairman.

I strongly support the Tobacco Product Education and Health Protection Act of 1990. In particular I am pleased that you have included provisions that I have introduced in previous Congresses relating to the strengthening of the tobacco product warning label to emphasize its addictive potential and the inclusion of tobacco in the drug education programs funded by the Drug-Free Schools and Communities Act of 1986.

Mr. Chairman, over the last 25 years, a lot of people in this country have reduced their use of tobacco. Unfortunately, young people have not. Recent studies show a decline in drug use among high school students, but there has been little change in cigarette smoking rates in the past decade. According to a recent *New York Times* article, 29 percent of high school seniors questioned say that they smoke cigarettes regularly, and once addicted, many of these teenagers are often hooked into a lifetime pattern of nicotine addiction.

And, Mr. Chairman, for those who wonder if this is an addiction or not, let me read for the committee a document that emerged in one of the legal battles of recent years on the use of tobacco and liability.

This is a document from a tobacco company, and it deals with nicotine. These are the words of the tobacco company:

"The cigarette should be conceived not as a product but as a package. The product is nicotine. The cigarette is but one of many package layers. There is the carton, which contains the pack, which contains the cigarette, which contains the smoke. The smoke is the final package. The smoker must strip off all of these packaged layers to get to that which he seeks . . . Think of the cigarette pack as a storage container for a day's support of nicotine . . . Think of the cigarette as a dispenser for a dose unit of nicotine. Think of a puff of smoke as the vehicle of nicotine. Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke."

Now, for anyone who would doubt that this is a statement about a substance which is addictive, do not take the tobacco company's own words or my opinion, take the opinion of the World Health Organization, the American Psychiatric Institute, and the Surgeon General of the United States.

Mr. Chairman, this bill that would place a little bit more explicit warning label on a package is enormously important. Equally important is the education provision of the bill because, as we know, it is the young people who are getting hooked. So you need more education for young people to prevent them from getting hooked. And that is why the inclusion of the education component in this bill is so enormously important.

Mr. Chairman, I would go one step further than the bill. I have introduced legislation in previous Congresses, and I hope as this bill works its way through Congress that we might find a way to add the provision which would deny the deductibility of advertising expenses for tobacco companies.

Every three years advertising companies spend about $8 billion, they get a subsidy of roughly $2.5 billion for their advertising. Mr. Chairman, every day in the world, 21,000 kids die because they cannot get childhood immunizations. For $2.5 billion, you can immunize the world's children.

Now, there will be people who will say there is a constitutional right to speak. Of course there is a constitutional right to say anything you want in this country. Nobody is disputing that. But there is no constitutional right to a tax subsidy. There is no constitutional right for the taxpayer to subsidize your freedom to say everything you want. And there is no constitutional right to a tax deduction. That is a policy decision that the Congress has to make.

I would hope that we would, before this is through, deny the deductibility of advertising expenses for tobacco companies. Make it a little more expensive for them to get teenagers hooked on a drug that will kill them, that will shorten their lives.

Mr. Chairman, I thank you for your leadership on this issue, and I hope that the committee will act quickly.

[The prepared statement of Senator Bradley follows:]

PREPARED STATEMENT OF SENATOR BRADLEY

Senator BRADLEY. Mr. Chairman, I am pleased today to have the opportunity to testify before your committee in support of the Tobacco Product Education and Health Protection Act of 1990. As you know, Mr. Chairman, I have been a strong advocate of alerting the American public of the malignant health hazards of tobacco use and in finding ways to limit its deadly effects. I hope this year we are able to make progress on these fronts. I am especially pleased that you incorporated into your bill two provisions that I have championed in the Senate for the past two years—the strengthening of the tobacco product warning label to emphasize its addictive potential and the inclusion of tobacco in drug education programs funded by the Drug Free Schools and Communities Act of 1986. I am here today to discuss these two provisions.

The evidence is overwhelming. Nicotine is a powerful habit-forming drug which may lead to compulsive use and greatly diminished capacity to exercise free will over tobacco use. Leading national and international organizations, including the American Psychiatric Association, World Health Organization, National Institute on Drug Abuse and the surgeon general have declared that chronic tobacco use constitutes addiction.

Mr. Chairman, last year the surgeon general issued a very important report that provides conclusive evidence that nicotine is an addictive drug. Many people consider tobacco a habit or custom. It is more. to be addictive, a drug must cause compulsive use and have mood altering effects as well as rewarding effects that reinforce drug-taking behavior. Nicotine meets these criteria.

The tragedy of nicotine addiction is that it occurs at a young age. Ninety percent of all cigarette nicotine addiction happen before the victim's 21st birthday. Fifty percent occur before the age of 14. It is terribly important that young people realize that once they begin to use tobacco, they may not be able to stop. We need to do everything we can to stop tobacco use. If more people realize that nicotine is a harmful addictive drug, fewer will use tobacco. This is why we must strengthen the warning label required on tobacco products to alert potential victims of its addictive potential.

Tobacco is the single biggest health hazard facing this country. The weight of scientific evidence points clearly to the dangers of tobacco use. More than 390,000 people die each year from tobacco use. Smoking contributes significantly to the painfully high infant mortality rates in this country. But sadly, despite the clear evidence that smoking kills, 34 percent of high school seniors don't believe smoking a pack a day causes great risk of harm to them; one third of women of child bearing age don't know that smoking causes stillbirths; and nearly thirty percent of smokers don't know that smoking causes heart disease.

And sadly, despite the remarkable decline in the percentage of the American people who smoke over the last 25 years, we have not seen continued progress among our young. Teenagers are the ultimate source of future customers for tobacco products. They are the vulnerable targets of slick advertising campaigns and subtle messages of success and appeal that tobacco companies tie to their deadly products. While the results of the recently conducted surve6y of drug use among the nations 2.7 million high school seniors showed some hopeful trends towards reduced use of illicit drugs such as cocaine and heroin, the survey found little change in cigarette smoking rates in the past decade. Twenty-nine percent of the seniors questioned say that they smoke cigarettes regularly. Once addicted, these teenagers often are hooked into a lifelong pattern of nicotine addiction.

Mr. Chairman, there is compelling evidence that tobacco education programs in this age group works to limit the pernicious effects of tobacco advertising and social pressures to smoke. Tobacco is every bit as addictive as other illicit drugs and every bit as much a killer. If we are truly committed to educating our children and young adults about addiction and the dangers of illicit drugs, we must educate them on the addiction and the dangers of tobacco products. This is why I feel so strongly that tobacco must be included along with alcohol and other illicit drugs in programs covered by the Drug-Free Schools and Communities Act of 1986.

Today, everyone who knows the facts agree—everyone, that is, except the tobacco manufacturers—that tobacco is a killer. The Federal Government should recognize its role in protecting the health of the public. I believe that the government should unequivocally say, "smoking is addictive and it will harm you." And it must, in no uncertain terms, say this to young Americans who are the future of this Nation.

Before concluding, Mr. Chairman, I would like to quote from a 1972 Philip Morris document that has been brought to my attention. It describes in no uncertain terms the fact that cigarettes are simply packaging for nicotine. "The cigarette should be conceived not as a product but as a package. The product is nicotine. The cigarette is but one of many package layers. There is the carton, which contains the pack, which contains the cigarette, which contains the smoke. The smoke is the final package. The smoker must strip off all these package layers to get to that which he seeks. . . . Think of the cigarette as a dispenser for a dose unit of nicotine. . . . Think of a puff of smoke as the vehicle of nicotine . . . is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke."

Mr. Chairman, tobacco is the vehicle for delivering nicotine to the public. We know that nicotine kills. Now we know that nicotine is addictive. It is government's job to see that people, particularly the young, are informed about the hazards and that fewer and fewer people spend their time trying to receive their "dose unit" of nicotine.

The CHAIRMAN. Thank you very much, Senator Bradley.

Congressman Durbin, we are glad you are willing to take the time to come over to the Senate, and we look forward to your testimony and comments.

Congressman DURBIN. Thank you very much, Mr. Chairman, Senator Hatch. Thank you for inviting me. I certainly appreciate your cooperation and joint efforts on our work over the last several years with Senator Lautenberg to ban smoking on virtually all of

America's airline flights. And you are right, it will start on February 25, this Sunday. I think this legislation is another major step forward.

When drug dealers exploit our children, many national leaders call for the death penalty. When porno producers lure our kids into their webs, we demand as a Nation swift and sure punishment. But when the tobacco companies hook our children on a deadly addiction to cigarettes and smokeless tobacco, we look the other way.

This hearing challenges America to protect its kids from a threat as insidious and deadly as crack, assault rifles, and AIDS, because the life-and-death statistics tell us clearly that more children will eventually succumb to an early death from tobacco than any of these other dangers.

On February 25, when the skies of our Nation's airlines go virtually smoke-free, we will be reminded that the well-heeled, muscle-bound tobacco lobby is not invulnerable. We now have a bipartisan congressional task force on smoking and health in the House of Representatives, with 48 members. This task force represents the first organized effort in the history of the House of Representatives to oppose pro-tobacco pressures that are all around us. The task force played a crucial role in galvanizing support for the airline smoking ban which I just mentioned.

Let us now turn our energies and attention to stopping these tobacco companies from making our best and most promising children tomorrow's diseased and crippled Americans.

[The prepared statement of Congressman Durbin follows:]

PREPARED STATEMENT OF REPRESENTATIVE DURBIN

Congressman DURBIN. I would like to thank the chairman for his leadership in holding this hearing on tobacco education and the tobacco industry's targeting of women, minorities, and children in their advertising and promotional efforts. I appreciate the opportunity to appear before the committee.

Mr. Chairman, this is a very timely hearing. In the first session of the 101st Congress, we saw several developments that demonstrate a new commitment on the part of the U.S. Congress to take a stand for public health even if it collides head on with the interests of the tobacco industry.

Both the House of Representatives and the Senate voted for a virtually total ban on smoking on domestic airline flights. When the ban takes effect this coming Sunday, February 25, airline passengers and crew members will finally be able to breathe easily on airplanes without risk of ingesting the toxic substances present in environmental tobacco smoke. I would particularly like to salute Senator Frank Lautenberg for his role in this battle. It was a great victory for public health, and I was delighted to have such an able ally in the Senate as we pursued the smoking ban.

Also in 1989, we saw the formation of the Congressional Task Force on Tobacco and Health, a bipartisan alliance of 48 Members of Congress who share a common concern about tobacco use and its effects on health and are willing to take a public stand on these issues. I am pleased to chair this Task Force along with my colleague, Representative Bob Whittaker of Kansas. For many years, Members of Congress have worked individually to spotlight the public policy issues associated with tobacco use, but the Task Force represents the first organized effort in which Members have banded together to oppose the pro-tobacco pressures that are all around us. The Task Force played a crucial role in galvanizing support for the airline smoking ban in the House of Representatives, and it is ready to take on the tobacco industry on other issues where tobacco use conflicts with public health.

A third sign of the times that should trouble the tobacco industry is the growing number of bills that highlight the variety of ways tobacco harms us. Tobacco is a legal product, but it is a deadly one. Members of Congress are recognizing more and more ways in which special government treatment of this product has facilitated its use, and they have begun to ask questions.

—Why isn't tobacco regulated the way every other drug in America is regulated?

—Why is U.S. government money—taxpayers' money—allowed to be used to promote this deadly product overseas?

—Why does the United States dedicate the full force of the Office of the U.S. Trade Representative to tearing down legitimate restrictions other nations have established to limit tobacco advertising in their countries?

—Why is tobacco allowed to be sold to our Nation's children?

—Why do States that prohibit tobacco sales to children allow tobacco to be sold in vending machines to which children have access?

—Why do so many schools continue to allow minors to smoke or use chewing tobacco on their premises?

—Why are tobacco companies permitted to advertise their deadly product in ways that appeal to children?

—Why is so little done to counteract the effects of the $2.5 billion tobacco companies spend each year to convince new customers to take up their terrible habit?

—Why have we failed to increase the excise tax on tobacco even to keep pace with the effects of inflation?

These questions have led to new bills, including the chairman's Tobacco Product Education and Health Promotion Act. I applaud the Chairman on the introduction of his bill, which includes innovative approaches to these issues.

This hearing is also timely because of its focus on how tobacco advertising and promotion is targeted. Health and Human Services Secretary Louis Sullivan is to be heartily commended for drawing attention to this issue by objecting to the marketing of a new brand of cigarettes targeted specifically at black Americans. This campaign would have offered more suffering, disease, and death to a group that already bears more than its share of the effects of smoking. I applaud Dr. Sullivan for speaking out.

The unfortunate truth is that we have ignored the targeting of tobacco ads for years. Billboards are much more prevalent in low-income urban areas and much more likely to display tobacco advertising than billboards in other locations. Lung cancer deaths of women have skyrocketed in recent years as cigarette promotion has focused on women. As Dr. Sullivan has spoken out in the case of Uptown, we need to speak out also against the longstanding practice of targeting women. In addition, we need to turn the spotlight on the ways in which tobacco ads are specially designed to appeal to teenagers.

Each year, the tobacco industry loses 390,000 customers who die of tobacco-related diseases and 1.5 million customers who quit smoking. To find nearly 2 million new customers annually, they make a great effort to recruit our children; and their cynical campaign to attract young people to use their product is very effective. Most new smokers today start smoking at a very young age: 25 percent by the age of 12 (6th grade); 50 percent by the age of 14 (8th grade); and 90 percent by the age of 20.

The tobacco companies claim that their ad campaigns are not targeted at children but rather at convincing people who already smoke to switch brands. If that were true, then they would have to proclaim their ad campaigns to be failures, because thousands of children pick up their first cigarette and start the habit every day, while only 10 percent of all smokers switch brands each year. One has only to look at the ads themselves to see how self-serving is the claim that the ads don't appeal to children. And the facts speak for themselves: 90 percent of all smokers start while they are still teenagers or pre-teenagers.

There are many things we must do to protect our children from the lure of tobacco, and the chairman's bill takes some important first steps:

—Incentive grants to schools to become smoke-free.

—Grants to States to help them better enforce existing State laws prohibiting tobacco sales to minors.

—Education and counter-advertising so that children and other vulnerable tobacco industry targets will hear the truth about tobacco.

—Regulation of tobacco products for the first time.

Other steps that should be taken by the Congress include restrictions on tobacco advertising so that it does not appeal to children, and an increase in the cigarette excise tax to discourage teen use. The General Accounting Office has estimated that, while 4 million teenagers currently smoke, a 21-cent per pack increase in price would reduce the number of teenage smokers by 500,000, resulting in 125,000 fewer premature deaths.

Mr. Chairman, there is no doubt that we have our work cut out for us. The tobacco companies have a long track record of success in protecting their narrow self-interest when it conflicts with public health. But their glory days have passed, and their claims have been debunked. The airline smoking ban showed that the tobacco industry is not invincible, and the formation of the Task Force as well as the public stands taken by the chairman and others show that the tobacco industry cannot keep Members of Congress from speaking out and working to protect the public health from the dangers of tobacco.

Again, I thank the chairman for his leadership in this area and for this opportunity to testify, and I look forward to the battle ahead.

The CHAIRMAN. Thank you very much.

Let me just ask a few brief questions.

Senator Lautenberg, we know that some 44 States regulate tobacco sales to minors, and we are going to hear about that in the course of the debate on this legislation. At the same time, in other areas, the Federal Government has effectively preempted States and local communities from taking action. Despite that, a number of States and local communities have already taken action. In my own city of Boston, for example, they have limited billboards in areas that are near schools. Those things have not been challenged; they have been well received by the public. Yet we are going to hear those provisions attacked, I am sure, as the means to end the whole tobacco industry.

Can you tell us a little bit from your own background and experience what your research showed? From what you know is taking place in local communities and States, do you think that the preemption provision of this legislation is important?

Senator LAUTENBERG. It is very important, Mr. Chairman. The ability of the Federal Government in many cases to preempt State law is legend. I mean, look at the environmental issues. Look at the workplace issues. There are all kinds of things.

A couple of our States have been very bold, have restricted purchase in vending machines by minors. As you know, the section of the bill that I have included with your legislation, Mr. Chairman, includes incentive grants to States to move these things. We want to encourage them. We want to help them learn what they can about counter-thrust advertising. It is included in your bill to help the States to deal with the problem.

Many of the States feel powerless to deal with it, but we have seen some interesting things lately, have we not, where States like Virginia, a tobacco State, has taken some very restrictive legislation and passed it through with flying colors. And people in, I think it was, Greensboro, NC, have enacted legislation that says that they don't want to pervade the air in their communities with tobacco, when it is in the center of tobacco country.

The CHAIRMAN. Senator Bradley, you talked about the addictive aspects of tobacco. Those on this committee, including Senator Hatch and the other members of the committee, worked very closely with education, rehabilitation, treatment, and research programs in the war on drugs. One of the things that keeps coming up is the fact that many young people who end up hooked on those various substances get started with gateway drugs, which are beer, cigarettes, and marijuana. And then the pattern continues over the course of a tragic life.

We have seen in this committee that the Institute for Mental Health did not receive the kind of increase in research funding over a period of years as some of the other institutes. I think everyone in this hearing room supported increased funding for basic research and applied research. But one of the things the researchers are identifying is the addictive personality: the personality which uses liquor, drugs, and tobacco. That isn't the case uniformly down the line, but there is evidence that this occurs among a group of our young people.

I am wondering if you might comment about addiction, the threat to the individual from nicotine and other carcinogens and whether you believe that some of this research is also important to our national effort to fight drugs?

Senator BRADLEY. Mr. Chairman, I think that strong action on tobacco is merited if for no other reason than it kills more people every year than alcohol and drug abuse. It is clearly addictive. If you look at the surgeon general's report, it reveals that 80 percent of all adult smokers would like to quit and two-thirds have made serious attempts at quitting but failed.

I believe that the death rate merits this kind of strong action. And there is no question that addiction to whatever has certain common characteristics, and those common characteristics are found in the addiction to tobacco just as they are found in the addiction to many other substances.

So, Mr. Chairman, I would argue that it is enormously important on its own terms, and it could have wider application and that we know that education can successfully deal with this.

The Centers for Disease Control, for example, reported in a demonstration project involving 30,000 students in the 4th to 7th grades that 8 percent of the children provided with the proper education on tobacco ended up smoking by the 7th grade—8 percent. Thirteen percent of those who were not given the teaching became smokers. Extrapolated on a national average, that means that if we had that kind of education program in the school systems, that there would be 146,000 fewer smokers in that age group.

It seems to me that that has got to be the objective of this legislation.

The CHAIRMAN. Let me just ask, Congressman Durbin, on the questions of education, I imagine during the course of the hearing we are going to hear a number of statements that say, "Well, people understand that smoking is dangerous to your health, and they still go ahead and do it. People understand that well enough."

Does your own research indicate that people really do understand how dangerous this is to their health?

Congressman DURBIN. No, I don't think so. I think they are lured by the advertising, by the cowboys and the sports figures and the racing car drivers who tend to create a certain aura about smoking as sophistication, a style. And I think many people are swept away by this and pay little attention to facts.

I see Dr. Blum in the audience here, who has made some very telling observations about the power of advertising with tobacco.

I think the most interesting things about this hearing, Senator, is that when the tobacco industry spokesmen are here and if you question them and if they answer as they have in the past, they will tell you that they are not targeting children, they don't want children to smoke, they just can't quite understand why it's happening.

Now, isn't it curious, in a world where they are spending billions of dollars targeting new smokers, inadvertently they are luring in millions of new young smokers each year? I don't think it is inadvertent at all; I think it is direct. They realize that if they can portray the positive, upbeat image about smoking, that they can overcome the fears and perhaps prey on a child's immaturity in making a choice too early in life that they can't change.

Senator **HATCH**. I just have one question I would like to direct to all three of you and maybe start with Senator Lautenberg.

That is this: There are many who share the concerns about the lack of regulation over tobacco, especially as these concerns relate to health matters. Do you agree with that, and what do you suggest we do, and are you willing to put the moneys in to really do the job here?

Senator **LAUTENBERG**. Well, Senator Hatch, I have always been willing to spend money to save money, and I think in this case we would be wise to put at least the couple of hundred million dollars that the committee has recommended into starting the process of eliminating smoking by youngsters.

It is common knowledge that smoking, smoking damage, time lost from work, and health costs run somewhere around $60 billion a year in this society. We all talk about the death rate, which is common knowledge. But how about the disability rate, people who develop emphysema who can't function, people who have other respiratory conditions that rob the employer and the employee of a day of productive work?

So I think that we should get on with it, spend the money, do the regulation necessary. I think the bill contains an excellent idea, and that is to establish a center to provide information under the Public Health Service to States on how to deal with this problem. And I think we ought to get on with it posthaste.

I for one am committed, as you know, to trying to deter smoking as a habit in this country of ours, and the Nation would prosper, I think, if we could eliminate the cost of the problems that smoking brings.

Senator **BRADLEY**. Senator Hatch, I would say that an investment in decreasing the amount of tobacco use would save taxpayers' dollars in the mid to long run because it would reduce the amount of costs that are incurred to deal with the various health effects that are caused by smoking.

But that doesn't help us as we deliberate in this budget year, so let me offer the humble suggestion that if we denied the deductibility of advertising for tobacco, that would be $2.5 billion per year—$2.5 billion per year—in deductions. So you would end up with probably a billion-plus dollars in revenue that you could use to make these kinds of education programs work.

I mean, Secretary Sullivan is here and he was, in my view, the most standup person on this issue that I have seen in a long time when he took on the purveyors of Uptown. My guess is that he is going to take on the purveyors of Dakota today, I would hope.

Senator HATCH. He did last weekend.

Senator BRADLEY. And let me say that, you know, if the committee wants any reason why not to go after these issues, let me just quote something that the surgeon general said, former Surgeon General Koop. He said, "The tobacco cigarette companies are killing several hundred thousand of their customers each year, and they need to be replaced. How can they do that? By exploiting foreign markets and young girls, the one group of Americans that have not begun to cut back on cigarette use."

So let's do a double hit here: Let's cut down, let's increase the cost of the cigarette and tobacco companies to lure young women and others into the use of the substance, and then let's take some of that revenue and use it to educate other people and, more broadly, all young people about the hazards of tobacco use.

Senator HATCH. Those are good suggestions.

Congressman Durbin.

Congressman DURBIN. I would only add that I think the suggestion made earlier about increasing the excise tax has been shown and demonstrated time and again that it will reduce the use of those who use tobacco products just by virtue of this increase in price. And there have been suggestions made, and I think good suggestions, that some of the revenues derived from that should be used for a public education campaign. Let's go on the airwaves on Saturday morning, when the kids are watching the shows, and start telling the story about what smoking is all about.

As Senator Bradley said earlier, once the education factor is put in there, there is a dramatic decline in the number of smokers. It will force the tobacco companies to start looking overseas, which I hope is the subject of one of your later hearings.

Senator HATCH. Well, let me just say this: I want to compliment all three of you for your leadership in this area. I have mentioned Senator Lautenberg, he and I teamed up in the Senate, but I did not give you anywhere near the credit you deserved at the outset, and I want to thank you for the work that you did in that bill last year that now will keep the airlines free of smoke.

And, Senator Bradley, I know that you are very sincere about this advertising matter. I am certainly going to give that every consideration.

But all three of you deserve our accolades here today, and I certainly would be remiss if I did not give them to you.

The CHAIRMAN. Let me just mention, Congressman Durbin, we are going to have hearings on the activities of the tobacco industry overseas. That track record is deplorable. I think we have seen the special trade representative effectively undermining legitimate products to give special preferences to tobacco companies to allow them to engage in insidious kinds of activities targeting those populations that are vulnerable in other countries.

So we appreciate your mentioning that. We will look forward to working with you. That is another area.

And as you know, Senator Bradley, I support what you are doing with regard to advertising. That proposal is not in our committee, and there is no reason why that cannot be visited on the floor of the Senate. I don't think most people really care that much about jurisdictions around here, but you and I know what it means. So we will look for ways of working together on that particular item. There are other aspects to the whole battle on tobacco as well.

Thank you very much. We appreciate your being here.

Dr. Sullivan, we welcome you very much back before our committee. I think your service as the Secretary of HHS is continuing to be a distinguished run, and I think all of us, including the previous panel who made such an important contribution, Senator Hatch, and myself are filled with admiration for your own personal courage and for the leadership that you have provided in this issue. It is really what a Cabinet member ought to be all about, and we are very eager to work closely with you, and we hope that your views will be listened to not only by the members of this committee but by the administration as well. Many of us think that you are ahead of the time.

We are delighted to have you here, and we look forward to your testimony.

STATEMENT OF HON. LOUIS W. SULLIVAN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES

Secretary SULLIVAN. Thank you very much, Mr. Chairman and Senator Hatch. It is always a pleasure to testify before this committee.

You have asked me to present my view on the problem of smoking and health. My view and the view of my department is straightforward and simple: No smoking. If we are serious about health promotion and disease prevention, then Americans must work to establish a smoke-free society. The glamorization of smoking must end. The real story must be heard and heeded: the serious personal health risks confronting the smoker and those who passively inhale the deadly fumes of smokers; the hidden personal tax that each American has to pay for the consequences of smoking; and the cumulative and devastating impact on our economy.

Mr. Chairman, this legacy of death and waste and destruction repeated again and again and again year after year must end. Today, I am releasing to the Congress a report entitled "Smoking and Health," that I have with me, "A National Status Report."

This volume compiles the national carnage. The death rate is indeed shocking. Each year, smoking kills almost 400,000 Americans, as you have already heard, more than 1,000 a day. During the course of these hearings this morning, almost 100 Americans will die because of the consequences of smoking, one every 1½ minutes.

Of course, the toll does not stop with the morgue. Each and every American, including those who don't even smoke, is paying a hidden tax of approximately $221 per person per year for the consequences of smoking, a tax that adds up to more than $52 billion annually.

This cost, primarily in the form of increased health care and insurance costs as well as lost productivity, demonstrates the far-reaching effects of smoking by our population, effects which penalize nonsmokers, too.

Now, I am especially concerned that while we have made some important gains in reducing tobacco consumption, we still have a long way to go, particularly in addressing smoking by women, by minorities, by blue-collar workers, and by young people.

Mr. Chairman, if we are to adequately address this tragedy, it is clear to me that we must move toward being a smoke-free society by the year 2000 if not sooner. I am committed to that goal, and so is my department.

We must work together to end this tragedy. That is why I have written to each hospital, reminding them of the many direct and indirect health hazards of smoking, asking them to make their facilities smoke-free zones, as some have already done. I have asked our Health Care Financing Administration to work with those hospitals that participate in the Medicare program to create a healthier smoke-free environment.

I will also urge other sectors of the Federal Government as well as all grantees of the Department of Health and Human Services to declare their facilities smoke-free, as we have done at the Department of Health and Human Services and some other Federal facilities.

I am also writing to tobacco retailers such as national convenience store chains to ask them to vigorously enforce the laws that already exist in 44 States prohibiting the sale of tobacco to minors.

Also, Mr. Chairman, you may be confident that we will continue to give a high priority to the many anti-smoking efforts that are ongoing in my department, such as our prevention campaigns and epidemiological research on the dangers of smoking, patterns of tobacco use, and the effectiveness of anti-smoking efforts.

We will continue to provide State health agencies with assistance in carrying out local anti-smoking interventions. We will continue to promote comprehensive school health education about the dangers of tobacco, as we will continue to sponsor programs such as the Smoking Cessation in Pregnancy Project that helps States integrate smoking cessation interventions into public prenatal services.

I say that it is high time that we also stop allowing smoking advertisers such a high hand. A cigarette is the only legal product that, when used as intended, causes death. Advertisers who disproportionately target women, minorities, or young Americans have gone too far. They must stop their irresponsibility.

And as you know, Mr. Chairman, and Mr. Hatch, I recently spoke out against the plans by R.J. Reynolds Tobacco Company to test market a new cigarette called Uptown to blacks in Philadelphia. Because of a justified public indignation, as well as the local community reservations against that product, the company canceled its plans to test market that product in that city.

I noticed something very interesting about that experience. Some tobacco industry spokespeople, when they could not adequately explain the death rates or tell us why black Americans should be targeted with deadly products, then with a wink and a nod they started to talk about the legality of cigarette advertising. And certainly such advertising is allowed under current law.

But that is not the point. I am talking about the health of the user and those who come in contact with a user's smoke. I am talking about the fellow who has to take money out of his own pocket to pay for the damage caused by smokers. It is morally wrong to promote a product which, when used as intended, causes death—trading death for corporate profits. This is a difference which I will not let the industry spokespeople obfuscate.

Responsibility is needed by the advertisers, by the media and the public. Advertisers and the media should question their own participation. Now, this is a good time for a heavy dose of the industry ethics that we hear so much about. I hope to see some of our ad agencies step forward to renounce tobacco ads and join in our anti-smoking efforts.

They should heed the advice of an editorial in *Advertising Age* on January 29, and I quote: "The wise media company, advertising agency or promotion shop, still heavily hooked on cigarette business will start planning for the day it must kick the habit."

I also mentioned individual responsibility. We must foster a stronger personal and national sense of responsibility for individual health. Over the past year, I have spoken out about the need to create a culture of character in which each and every American focuses on better health promotion and disease prevention.

We can take this argument even farther: Prevention of illness is a responsibility we have, not only to ourselves but to each other. Good health not only allows for more individual freedom and happiness, but prevention practices can allow us to spend money for those who become ill with diseases that we currently cannot prevent.

Mr. Chairman, I began my testimony by calling for a smoke-free society by the year 2000, a goal eloquently envisioned by former Surgeon General Koop. We can achieve this goal, but it will require serious diligence, commitment, dedication, and concern. We cannot be faint-hearted, hesitant, or easily discouraged.

What is required is persuasion and courage by each of us: Persuasion to convince millions of smokers, people we love or work with, or maybe even don't know, that their smoking is killing them and hurting us; and courage, the courage to take a stand and say what desperately needs to be said to those who light up in smoke-free zones, to irresponsible advertisers who disproportionately target the young, women, and minorities with a product that will kill them, and to critics who believe that a difficult fight can never be won.

We do not have to learn to live with the adverse health and economic costs. They are unacceptable, outrageous, and intolerable. And I pledge that I will work very closely with this committee to help achieve success in the anti-smoking campaign.

That completes my statement, and I would be pleased to respond to questions you have, Mr. Chairman.

[The prepared statement and report of Dr. Sullivan follow:]

PREPARED STATEMENT OF LOUIS W. SULLIVAN, M.D.

Mr. Chairman and Members of the Committee: Thank you for the opportunity to testify at today's hearing. I congratulate you, Mr. Chairman, and Senator Hatch, for your efforts to focus attention on the issue of tobacco and health. Given the tremendous toll that tobacco wreaks on our Nation's health, it is urgent that we work together with renewed vigor to develop strategies to curtail tobacco use.

I will summarize the scope and nature of the problem of tobacco use in the United States and the activities within the Department of Health and Human Services to reduce the use of tobacco.

THE HEALTH CONSEQUENCES OF SMOKING

Since the release of the first surgeon general's report on smoking and health in 1964, we have made tremendous progress toward our ultimate goal of a smoke-free society. A quarter century ago, 40 percent of adults—and more than half of all men—smoked cigarettes. Now less than 30 percent of adults smoke, and almost half of all living Americans who ever smoked have quit. Per capita cigarette consumption has fallen each year since 1973.Despite those gains, cigarette smoking remains the single, most important preventable cause of death in our society. Smoking is directly responsible for approximately 390,000 deaths each year in the United States, or more than one of every six deaths in our country. The number of Americans who die each year from diseases caused by smoking exceeds the number of Americans who died in all of World War II, and this toll is repeated year after year after year.

I am particularly concerned about smoking among women, minorities, blue-collar workers, and young people. Women took up smoking in large numbers in the 1940s and 1950s. Since that time, the rate of smoking has declined much more slowly among women than among men. Cigarette companies have aggressively targeted women since 1928, when women were asked to "Reach for a Lucky Instead of a Sweet." A more contemporary advertising campaign associates smoking with women's liberation—"You've Come a Long Way, Baby." These ads fail to point out that smoking is an equal opportunity killer. Lung cancer has overtaken breast cancer as the No. 1 cause of cancer death among women, and lung cancer death rates among women continue to increase at an unrelenting pace.

Women are as susceptible to heart disease, emphysema, and other smoking-related diseases as they are to lung cancer. Last month, for example, an article published in the *New England Journal of Medicine* showed that women who smoke are more than three times as likely to have a heart attack than women who have never smoked. This study and hundreds of others have demonstrated that women who smoke like men die like men who smoke.

Women also suffer unique smoking-related health effects. Women who smoke during pregnancy are more likely to have miscarriages, low-birthweight babies, and babies who die during their infancy. Several studies have shown an association between smoking and cancer of the uterine cervix.

The problem of smoking among blacks and other minorities is grave. During the past quarter century, smoking rates have been much higher in blacks than in whites, especially among men. Blacks are 20 percent more likely than whites to die of diseases attributable to smoking. Compared to white men, black men are 45 percent more likely to die of cancers of the respiratory system, 25 percent more likely to die of heart disease, and 90 percent more likely to die of stroke. Each of these three disease categories is strongly linked to cigarette smoking.

I am greatly disturbed by the cigarette industry's targeted marketing toward minorities. In January, I spoke out against the plans of R.J. Reynolds Tobacco Company to market a new cigarette called Uptown to blacks in Philadelphia. Fortunately, Reynolds canceled its plans to test market that brand in Philadelphia. But the industry continues to market many other cigarette brands to blacks and to Hispanics. As I noted last month, the cigarette industry's message is more disease, more suffering, and more death for groups already bearing more than their share of smoking-related illness and mortality. We must resist the unworthy efforts of the tobacco industry to earn profits at the expense of the health and well-being of our poor and minority citizens.

Smoking rates are also much higher among blue-collar workers and the unemployed than among white-collar workers. In 1985, for example, 40 percent of blue-collar men and 44 percent of unemployed men smoked cigarettes, compared to 26 percent of white-collar men. As in the case of women and minorities, cigarette companies have targeted blue-collar workers with aggressive advertising and promotional campaigns. Cigarette companies are frequent sponsors of car and motorcycle races, and they have shifted much of their magazine advertising from so-called "upscale" magazines such as *Time* and *Newsweek* to "blue-collar" magazines such as *Popular Mechanics* and *Field and Stream*.

Smoking among young people is a cause for particular concern. Daily smoking among high school seniors declined between 1976 and 1980 from 29 percent to 21 percent, but has leveled off since 1980. Young females are smoking at higher rates than young males. The age of smoking initiation has become younger over time, particularly among females. About 90 percent of smokers begin this addiction as children or adolescents. Studies have shown that the younger the age at which one begins to smoke, the more likely one is to become a long-term smoker and to develop smoking-related diseases. If the adult rate of smoking were to continue at the present level, at least 5 million of the American children who are alive today will die of smoking-related diseases. Preventing youngsters from taking up smoking is far more cost-effective than treating addiction later in life.

It is all too apparent that we, as a society, still do not take the problem of smoking among children and adolescents as seriously as we should. Forty-four States have laws on the books that prohibit the sale of tobacco to minors, but compliance with and active enforcement of these laws is inadequate. Ubiquitous cigarette advertising portrays smoking as safe, sexy, and sophisticated—themes which cannot help but appeal to impressionable adolescents.

The Economic Consequences of Smoking

The disease, disability, and premature death caused by smoking impose significant economic costs on society. According to a report of the Office of Technology Assessment (OTA), cigarette smoking was responsible for $22 billion in health care costs and $43 billion in lost productivity in the United States in 1985.

Today I delivered a National Status Report on Smoking and Health to the Congress. This report provides 1985 data on smoking- related mortality and economic costs for each of the 50 States. Smoking-attibutable deaths ranged from 28,533 in California to 271 in Alaska. The highest smoking-attributable mortality rate (per 100,000 persons) was 175.9 in Kentucky, whereas the lowest was 45.3, in Utah. It is no coincidence that Utah also had the lowest smoking prevalence that year (14 percent) while Kentucky had one of the highest (35 percent). The economic costs attributable to smoking averaged $221 per person across all 50 States, but were five times higher in Rhode Island ($284 per person) than in Utah ($56 per person). The sum of the State economic costs is a starting $52 billion, which is similar to the OTA estimate for the same year. The economic impact of smoking is no doubt much higher today than in 1985.

HHS Activities on Tobacco and Health

Several agencies within the Department of Health and Human Services (HHS) have ongoing activities in place to encourage smokers to quit, to prevent the initiation of smoking among young people, and to conduct research to address important unanswered questions about smoking behavior and its effects on health. In fiscal year 1989, HHS expenditures for these activities amounted to approximately $79 million. Under the President's 1991 budget, spending is expected to rise to at least $85 million.

I would like to highlight two programs within the Public Health Service. The Centers for Disease Control's Office on Smoking and Health is the focal point for the Federal Government's activities on tobacco and health. With an annual budget of approximately $3.5 million, this Office is responsible for producing the surgeon general's *Report on the Health Consequences of Smoking* and for conducting a national public information campaign on smoking and health. The Office also conducts epidemiologic research on patterns of tobacco use and the effectiveness of anti-smoking interventions. In addition, the CDC provides assistance to State health agencies in carrying out local anti-smoking interventions and to State education agencies to promote comprehensive school health education that incorporates tobacco education. for example, through the Smoking Cessation in Pregnancy (SCIP) project, CDC is providing assistance to States to integrate smoking cessation interventions into public prenatal services.

At the National Institutes of Health (NIH), the National Cancer Institute (NCI) allocated $39 million in fiscal year 1988 and $40 million in fiscal year 1989 for tobacco control, most of which funded research in two areas: (1) the effectiveness of different types of anti-smoking intervention, such as school-based programs, self-help strategies, interventions by physicians and dentists, and mass media interventions; and (2) interventions targeted to high-risk populations, including blacks, Hispanics, women, and heavy smokers. The NCI plans to commit approximately $120 million over the next 8 years to the American Stop Smoking Intervention Study, or ASSIST. This project, to be carried out in collaboration with the American Cancer Society, will provide support to approximately 20 States and large metropolitan areas for the development or strengthening of community-based coalitions capable of delivering effective tobacco control interventions. Other institutes at NIH and the Alcohol, Drug Abuse, and Mental Health Administration also contributed another $34 million in fiscal year 1989 to research, prevention, and education on smoking and health issues.

S. 1883

Although we support the committee's efforts to focus greater attention on tobacco and health, I believe the Department's activities—those underway and those we will be pursuing during the coming months—serve the same purpose and accomplish the identical goals as those set forth in S. 1883. The Administration shares the concerns addressed by the legislation.

We do not believe, however, that the additional authorizations and requirements contained in S. 1883 would measurably add to our current or planned efforts. Therefore, the Administration believes such legislation is unnecessary.

NEW INITIATIVES

The activities already underway are important, but clearly more needs to be done. Thus I have initiated a series of actions to enhance this Department's tobacco-and-health program. These actions, some of which have already been initiated, include the following:

—As mentioned earlier, my fiscal year 1991 budget includes $85 million for smoking research, prevention, and education activities—almost double the amount spent in fiscal year 1988.

—I have directed the Public Health Service to identify additional resources that can be directed towards innovative educational programs on tobacco and health to be carried out by public and private entities.

—We are developing new initiatives for attacking the problem of smoking among young people, women, and minorities.

—We are proposing joint initiatives with other Federal agencies such as the Department of Education, the Department of Defense, and the Department of Veterans Affairs.

—Along with my senior staff, I plan to raise the issue of tobacco and health with influential community leaders, minority and women's organizations, publishers, sports associations, and elected officials at the State and local level.

—I will challenge tobacco retailers, such as national convenience store chains, to enforce vigorously the laws that exist in 44 States prohibiting the sale of tobacco to minors.

—I will aggressively pursue strategies to create safe smoke-free environments wherever possible. We have already established a policy banning smoking in all HHS facilities, affecting 120,000 employees nationwide. I will encourage similar action for other sectors of the Federal Government, and I will urge all HHS grantees to establish smoke-free environments.

—I am particularly concerned about smoking in medical facilities. I will be sending a letter to the hospitals and other health care facilities who participate in the Medicare program strongly encouraging them to establish smoke-free environments.

Mr. Chairman, these are only some of the actions we will be pursuing during the coming months. I look forward to working with you and other members of Congress to promote a smoke-free society. Elimination of this addictive substance will do more to enhance the length and quality of life in the United States than any other step we could take.

I would be happy to answer any questions that you or other members of the committee might have.

TABLE 2

Prevalence (%) of Smoking by State, Age, and Sex: United States, 1985 *

State	Age Groups (Years)					
	20–64		65 +		20 +	
	Males	Females	Males	Females	Males	Females
Alabama	42.7	25.5	15.8	17.7	38.8	23.0
Alaska	44.2	29.8	30.1	15.8	43.4	28.9

TABLE 2—Continued

Prevalence (%) of Smoking by State, Age, and Sex, United States, 1985 [1]

State	Age Groups (Years)					
	20–64		65 +		20 +	
	Males	Females	Males	Females	Males	Females
Arizona	36.4	27.5	23.4	13.8	34.7	25.3
Arkansas	41.8	30.7	15.2	4.9	37.4	25.2
California	31.4	24.4	15.3	12.4	29.4	22.4
Colorado	31.8	29.3	23.5	12.8	30.9	27.2
Connecticut	32.5	30.7	22.6	16.7	31.1	28.0
Delaware	37.6	32.0	22.5	14.3	35.5	29.1
District of Columbia	36.4	32.4	22.6	13.6	34.6	28.8
Florida	38.6	31.2	20.7	13.9	34.9	27.1
Georgia	41.3	29.0	25.8	13.6	39.5	26.4
Hawaii	34.2	27.2	13.1	11.3	30.5	24.3
Idaho	29.1	23.3	13.7	13.7	26.4	21.4
Illinois	33.9	29.3	19.4	10.9	31.9	26.1
Indiana	39.4	33.4	17.0	12.8	36.5	29.8
Iowa	35.3	25.3	21.2	14.6	32.8	23.0
Kansas	37.6	30.2	19.8	9.0	35.0	25.8
Kentucky	39.3	36.9	29.7	16.0	38.1	33.7
Louisiana	36.5	26.1	29.2	12.2	35.6	23.8
Maine	34.9	32.1	16.0	13.1	31.5	27.6
Maryland	33.8	30.5	19.4	16.0	31.7	28.2
Massachusetts	30.0	30.4	20.[illegible]	16.0	28.6	27.6
Michigan	37.3	37.2	20.0	15.9	35.0	33.6
Minnesota	37.3	31.7	14.0	11.6	33.7	27.5
Mississippi	39.0	27.2	30.6	10.9	38.0	24.1
Missouri	33.5	26.6	18.2	14.4	31.2	24.2
Montana	27.5	28.5	18.3	12.7	26.1	25.8
Nebraska	28.3	26.9	17.8	6.7	26.5	22.2
Nevada	40.5	37.6	22.8	15.6	38.6	35.3
New Hampshire	38.0	29.0	21.1	15.1	35.7	26.4
New Jersey	33.2	27.1	19.9	15.1	31.1	24.7
New Mexico	34.8	25.9	21.8	15.3	32.9	24.1
New York	34.3	29.3	16.5	10.7	31.8	25.9
North Carolina	42.4	27.4	26.1	10.4	40.2	24.3
North Dakota	30.7	28.0	16.5	7.9	28.6	24.6
Ohio	37.6	33.9	18.1	12.0	34.9	29.8
Oklahoma	38.5	31.8	21.2	23.9	36.2	30.2
Oregon	29.8	29.4	11.0	17.9	26.9	27.5
Pennsylvania	35.4	28.8	15.6	13.9	32.0	25.6
Puerto Rico	41.8	14.9	32.9	4.6	41.5	13.5
Rhode Island	39.0	37.8	19.5	11.0	36.3	32.5
South Carolina	35.2	24.3	29.5	7.6	34.4	21.3
South Dakota	33.6	29.7	15.9	10.7	30.5	26.4
Tennessee	40.3	29.5	17.4	7.8	37.1	25.2
Texas	37.6	28.8	25.1	12.5	36.2	26.2
Utah	20.4	12.2	10.5	2.7	19.2	10.7
Vermont	34.2	32.1	20.3	18.2	32.0	29.4
Virginia	37.7	31.4	38.2	13.9	37.8	28.8
Washington	33.6	29.7	12.1	14.6	29.9	26.9
West Virginia	41.8	34.1	22.9	10.1	38.4	28.7
Wisconsin	28.6	28.1	22.2	10.4	27.6	24.7
Wyoming	33.5	36.1	20.6	10.5	32.1	32.0

[1] Source: Current Population Survey, 1985, U.S. Bureau of the Census, except for Puerto Rico (Center for Health Promotion and Education, 1987) and Minnesota (Behavioral Risk Factor Surveillance System, 1986).

TABLE 3

Smoking-Attributable Mortality by State, United States, 1985

State	Men	Women	Pediatric	Total	Rate [1]
Alabama	3,672	1,457	45	5,174	129.5
Alaska	187	74	10	271	54.3
Arizona	2,688	1,125	31	3,844	122.6
Arkansas	2,771	1,046	28	3,845	163.7
California	18,524	9,773	236	28,533	109.5
Colorado	1,971	1,002	32	3,005	94.2
Connecticut	2,711	1,528	30	4,269	135.0
Delaware	573	261	15	849	137.6
District of Columbia	579	319	13	911	147.6
Florida	12,517	5,544	125	18,186	161.3
Georgia	5,342	2,117	80	7,539	127.7
Hawaii	549	205	12	766	77.0
Idaho	695	258	6	959	96.1
Illinois	10,530	5,138	178	15,846	137.8
Indiana	5,356	2,525	54	7,945	144.6
Iowa	2,816	1,183	18	4,017	139.5
Kansas	2,179	953	21	3,153	130.2
Kentucky	4,454	1,989	54	6,497	175.9
Louisiana	3,909	1,618	44	5,571	125.1
Maine	1,262	573	26	1,861	161.0
Maryland	3,478	1,727	61	5,266	121.3
Massachusetts	5,315	3,154	46	8,515	146.6
Michigan	8,152	4,163	138	12,453	137.3
Minnesota	3,372	1,624	43	5,039	120.3
Mississippi	2,447	753	33	3,233	124.7
Missouri	5,147	2,440	51	7,638	152.2
Montana	690	349	8	1,047	127.4
Nebraska	1,621	597	13	2,231	140.1
Nevada	963	496	15	1,474	158.5
New Hampshire	921	469	8	1,398	140.6
New Jersey	6,822	3,287	71	10,180	134.9
New Mexico	842	355	20	1,217	84.9
New York	17,191	9,429	260	26,880	151.6
North Carolina	5,884	2,345	68	8,297	134.9
North Dakota	554	200	6	760	144.5
Ohio	10,618	5,156	107	15,881	148.0
Oklahoma	3,223	1,466	40	4,731	144.1
Oregon	2,441	1,266	28	3,737	139.1
Pennsylvania	12,100	5,747	114	17,961	151.6
Puerto Rico [2]	1,791	628	51	2,470	75.4
Rhode Island	998	570	3	1,571	163.6
South Carolina	2,980	962	37	3,979	121.4
South Dakota	664	270	9	963	137.2
Tennessee	4,756	1,729	52	6,537	137.8
Texas	11,602	5,095	131	16,828	103.6
Utah	470	255	17	742	45.3
Vermont	489	246	5	740	138.3
Virginia	5,046	2,163	75	7,284	131.5
Washington	3,672	1,858	63	5,593	128.6
West Virginia	2,298	1,012	15	3,325	171.7
Wisconsin	3,954	1,642	40	5,636	118.1
Wyoming	329	158	10	497	98.4
Total	214,135	100,303	2,706	[3] 317,144	133.6
Highest State	18,524	9,773	260	28,533	175.9
Lowest State	187	74	3	271	45.3
Average	4,118	1,929	52	6,099	129.1

[1] Per 100,000 persons

[2] Based on 1983 data

[3] A more up-to-date estimate of total smoking-attributable mortality in the United States is 390,000 per year, based on calculations in the 1989 Surgeon General's Report, ***Reducing the Health Consequences of Smoking***

TABLE 6

Smoking-Attributable Economic Costs by State, United States, 1985—in Millions of Dollars

State	Direct Morbidity	Indirect Morbidity	Indirect Mortality	Pediatric Indirect Mortality	Total	Per Capita Cost [1]
Alabama	349.6	174.4	387.5	10.1	901.6	226
Alaska	34.7	16.4	28.8	2.4	82.3	165
Arizona	294.9	109.8	195.6	7.1	607.5	194
Arkansas	196.0	101.1	222.7	6.3	526.1	224
California	2,932.4	1,059.8	1,766.7	53.2	5,812.1	223
Colorado	329.3	109.8	157.3	7.3	603.8	189
Connecticut	348.7	123.6	222.2	6.9	701.4	222
Delaware	69.5	27.5	51.3	3.4	151.7	246
District of Columbia	19.0	26.0	82.0	3.0	130.0	211
Florida	835.2	407.4	790.1	28.1	2,060.7	183
Georgia	537.9	257.7	534.4	18.0	1,347.9	228
Hawaii	88.1	32.1	50.5	7.8	173.5	174
Idaho	68.6	25.6	46.8	1.3	142.2	143
Illinois	1,325.7	514.8	934.6	40.2	2,815.4	245
Indiana	563.9	448.1	231.4	14.4	1,257.9	229
Iowa	192.7	45.6	177.3	4.1	419.6	146
Kansas	159.4	70.3	136.4	4.9	370.9	153
Kentucky	327.0	170.0	397.5	12.3	906.9	246
Louisiana	263.8	138.4	302.9	8.8	713.9	160
Maine	124.7	57.0	128.4	6.0	316.1	273
Maryland	446.6	185.3	360.9	13.8	1,006.5	232
Massachusetts	847.5	288.4	462.0	21.2	1,619.1	279
Michigan	1,103.9	275.8	699.6	31.2	2,110.4	233
Minnesota	483.1	154.3	230.0	9.7	877.0	209
Mississippi	210.2	98.8	210.1	7.4	526.6	203
Missouri	594.7	232.0	434.6	11.5	1,272.9	254
Montana	39.9	20.6	46.3	1.8	108.7	132
Nebraska	156.4	56.3	91.8	3.0	307.6	193
Nevada	121.1	47.6	91.4	3.5	263.6	283
New Hampshire	95.0	40.4	81.6	1.8	218.9	220
New Jersey	701.7	301.1	604.2	16.3	1,623.4	215
New Mexico	71.9	33.1	62.4	4.6	172.0	120
New York	1,865.1	907.3	1,780.9	58.5	4,611.8	260
North Carolina	491.6	267.5	606.6	15.4	1,381.1	225
North Dakota	93.7	38.6	29.8	1.0	161.1	239
Ohio	1,246.2	481.7	865.5	24.0	2,637.4	246
Oklahoma	339.6	259.3	135.5	9.1	743.5	227
Oregon	151.6	83.5	192.3	6.3	433.7	161
Pennsylvania	1,403.7	542.4	954.6	25.7	2,926.3	247
Puerto Rico [2]	38.8	33.0	95.2	11.5	178.5	54
Rhode Island	133.0	48.7	90.0	1.0	272.5	284
South Carolina	227.9	124.3	282.0	8.4	842.5	196
South Dakota	60.7	24.2	42.0	2.0	129.0	184
Tennessee	284.4	352.6	157.2	11.7	806.0	170
Texas	1,618.9	617.0	1,079.2	29.4	3,344.5	206
Utah	43.2	27.0	18.1	3.8	92.1	56
Vermont	52.0	19.8	38.5	1.1	111.2	208
Virginia	534.4	236.0	465.7	16.9	1,243.0	224
Washington	428.7	153.0	281.2	14.3	877.1	202
West Virginia	199.1	93.2	206.2	3.4	501.9	259
Wisconsin	469.5	266.7	256.7	9.0	1,011.8	212
Wyoming	38.9	15.1	27.3	4.6	85.8	170
Total	23,653.9	10,237.9	17,823.8	623.3	[3] 52,338.9	221
Highest State	2,932.4	1,059.8	1,780.9	58.5	5,812.1	284
Lowest State	19.0	15.1	18.1	0.8	82.3	54
Average	484.9	196.9	342.8	12.0	1,006.5	205

[1] In dollars, based on 1985 resident population estimates, U.S. Bureau of the Census

[2] Based on 1983 data

[1] Using a different methodology, the Office of Technology Assessment estimated the total economic impact of smoking-related disease to be $65 billion in 1985.

From *Smoking and Health: A National Status Report*, 2nd edition, U.S. Department of Health and Human Services, Office on Smoking and Health, Rockville, MD, February 1990.

The CHAIRMAN. Thank you very much, Mr. Secretary. That is a very clear, unequivocal statement and a commitment which I think all Americans understand you believe in very deeply. And I think we are fortunate to have your leadership.

It appears to me that for far too long there has really been a conspiracy of silence by many in responsible positions in Government regarding the longstanding, coverup of the health implications and public health implications of smoking by the cigarette industry in our society. You have certainly demonstrated by your actions and your statement today your commitment to deal with this issue.

But when it comes to cigarette advertising, certainly public outrage is way ahead of Federal policy. So there have to be some steps taken to deal with these abuses. Do you agree that there are going to have to be steps taken to deal with the abuses?

Secretary SULLIVAN. Yes, Mr. Chairman. I certainly want to emphasize the fact that we are strongly committed to getting the message out to our citizens about the adverse health consequences of smoking because when President-elect Bush, in December of 1988, announced his intention to nominate me for this position, I indicated at that time that one of my priorities would be health promotion, disease prevention. As a cornerstone of our effort to improve the health status of all of our citizens, including our minorities and the poor who disproportionately share a high burden of disease and injury.

It is impossible for us to achieve that goal without providing accurate, adequate information to our citizens so that they can act responsibly. We cannot, in our effort to improve our health status, simply rely on our medical model of patching individuals up once they are ill. We will never reach the goal of improved health status if we were to rely simply on that.

We also will not achieve our goal of health care cost containment without appropriate changes in health behavior by our citizens. The consequences economically that I mentioned of more than $52 billion in both health care costs as well as lost productivity certainly is not an insignificant figure.

So, indeed I am very committed to doing everything that I can to help inform our citizens about the adverse consequences of tobacco advertising.

And let me also comment that I find it personally objectionable to see in low-income and minority neighborhoods, Hispanic and black neighborhoods particularly, the high density of billboard advertisements for tobacco. Clearly, 30 years ago, before we had the data, one could say that these products should be advertised so that people would know that they are available. But we now know that with one person dying every 1½ minutes from the consequences of tobacco use, that when we induce people to use these products, we are inducing them to change good health for bad health, for illness and for loss of life.

So, clearly, I am committed to doing everything that I can to inform the public.

The CHAIRMAN. In the legislation, we provide some incentives to the States to devise strategies to permit the States or local communities to regulate advertising. So that if a local community feels that it wants to be free from this kind of advertising around a local school, for example it would be able to take action. As I mentioned just briefly in my opening statement, a number of communities across the country already have.

Do you have any reservations about this effort to permit the States or local communities to protect themselves from this kind of advertising?

Secretary SULLIVAN. Mr. Chairman, our office of smoking and health already works with State and local Governments as well as private organizations that want to mount effective campaigns against smoking. So I certainly would think that any effort to strengthen that activity would certainly be appropriate and in keeping with the kinds of activities that our office of smoking and health is already engaged in.

The CHAIRMAN. We have been joined by our colleague from Minnesota where there has been a very aggressive program including paid advertisement, with corresponding results, which I am sure you are familiar with, and with some substantial reductions, from 29 to 25 percent in the rate of tobacco use.

We will hear additional testimony on this issue later in the course of the hearing. They have demonstrated what was demonstrated a number of years ago in the early 1970's, when counter-advertising on TV caused precipitous drops in smoking rates.

Do you think this kind of effort should be encouraged?

Secretary SULLIVAN. Mr. Chairman, I think that there is no question that ads to inform the public about the dangers of smoking should indeed be done, and we would strongly encourage that.

The one area we would differ would really be whether they should be paid advertisements or public service announcements.

I believe that this represents an opportunity for the media to come forward with donated time to help get this message across to promote the health of our citizens. And we do have concerns—I have concerns—that we do have a budget deficit, and I would think that if we could get the media themselves to give us adequate time with such announcements, that would not only give us a public service but would allow us, quite frankly, to use the limited resources that we have in our department for other pressing needs as well.

We certainly would like to see the media help us in that, and I would think that that would be an appropriate way we would support.

The CHAIRMAN. Well, we may have an area where we may agree to differ; but we hear of what you're talking about, and we certainly don't have any problem understanding why you think that the messages are important.

Are you as troubled by the actions of the industry when they have, as part of their code of ethics, pledged not to include anyone who is under the age of 25 in their advertising while they are at the same time designing campaigns like Dakota which are meant to appeal to 18- to 20-year-olds? Are you troubled by this?

Secretary **Sullivan**. Yes, Mr. Chairman. I am not only troubled, I am outraged because I agree with the earlier comment of one of our congressional colleagues that pointed out that no one believes the tobacco companies when they say that they are not targeting young people, when they have tremendous information-gathering capabilities but somehow they can't understand that their advertising is inducing young people before the age of majority to undertake smoking, because we know that between 80 and 90 percent of adult smokers did start as teenagers.

So, clearly, I am indeed very concerned about that issue, and as I stated before, I believe this is an instance of corporate irresponsibility to lure our young people into taking such a product that is known to be dangerous, when by associating this product with health activities such as sports events and with very attractive models and successful-appearing young people with the message being to them that to be successful or to be attractive or to be indeed accepted, one should indeed undertake smoking, when really what is being delivered is death in the products from tobacco.

The **Chairman**. I think we have seen an example of that kind of promotion recently here in Washington in the advertising for the Virginia Slims tennis tournament. Here is an insert from *USA Today* and it's got this Virginia Slims Tennis player as a cover and then the information about the players with pictures on the inside, and right on the back page you have the advertising for the Virginia Slims product. And the logo right at the top shows a young lady—it will be a bit difficult to see from where you are—with a tennis racket in one hand and a cigarette in the other.

Is this the kind of thing that all Americans should be troubled about?

Secretary **Sullivan**. Mr. Chairman, I think our athletic community really should be ashamed of being willing to associate their names with a product that causes disease and death in such a high number of our citizens. As was stated earlier, tobacco use is the No. 1 cause of preventable death in our society, and I think that it is really unfortunate that successful athletes who became successful because they are models of good health would indeed allow themselves to be associated with such a product for the purpose of adding to the corporate profits of our tobacco companies.

The **Chairman**. The tobacco industry has promised not to distribute free cigarettes to anyone under the age of 21. Yet it places coupons for free samples in magazines like *Sports Illustrated*, while many of those that buy that magazine are under the age of 21.

How can they possibly be serious about their own promise when they have this kind of advertising gimmick?

Secretary **Sullivan**. Well, Mr. Chairman, I think the answer is obvious. I think that the tobacco companies, in spite of their statements, clearly are targeting our young people. And again I find that, as the Nation's chief health officer, objectionable.

Here we have a product that kills every year more individuals than U.S. citizens died in World War II. Every year, more Americans die from tobacco use than all Americans who were killed in World War II. And yet we indeed have companies that are pushing such a product on our young people with the lure that this is the way to be successful, attractive, and an outstanding sports person or what have you. I find that reprehensible.

The Chairman. My time is up.

Senator Hatch.

Senator Hatch. Well, thank you, Senator Kennedy.

We are certainly happy to have you here, Dr. Sullivan. But you know that I believe that FDA lacks the resources to regulate the products that are currently under its jurisdiction.

If you were, for instance, to require FDA to regulate tobacco products, where would the moneys come from? I certainly don't want to take the money away from new drug applications or new medical device or medical device review or food safety, fish inspection and other effective work that the FDA does. So this is an important issue, and I would like you to give some thought as to just how we do this.

As you know, this bill would set up a separate entity within CDC, and it seems to me that that would probably be more appropriate than at FDA, which does not have enough resources now to do the important work that it does. It regulates 25 percent of all the consumer products in America.

Secretary Sullivan. Yes, Senator Hatch, let me comment on that. In my full statement submitted to the committee, I point out that we fully support the intent of the bill.

Senator Hatch. Yes.

Secretary Sullivan. But we do have some concerns about parts of the bill, and that concern really is to establish a new agency. We are working very hard in my department now to, I think, accomplish many of the objectives of the bill, and we certainly will continue that. And I have instructed my assistant secretary of health to try to find even more resources that we can devote to this.

Senator Hatch. Well, thank you. We need you to do that. Recognizing this legislation establishes a center for tobacco products within an already existing agency, the Centers for Disease Control in the Public Health Service, I would hope that this administration would look at that favorably because I think it is probably a better way of doing it than trying to saddle FDA with it. And we will just have to see what happens on that.

Dr. Sullivan, in a recently released high school senior survey on drug use and in your statement today you noted that tobacco use is not declining among our Nation's high school students. How much higher is tobacco use among those who are school dropouts?

Secretary Sullivan. It is quite significant. I believe it's more than 2½ times as high among individuals who have not finished high school as opposed to college graduates. I believe among college graduates it's around 16 or 17 percent versus around 35 to 38 percent.

Senator Hatch. Do you have any suggestions on how we might reach those people?

Secretary Sullivan. Well, clearly, we need to redouble our efforts for our educational programs and try to have our companies and our advertising agencies assume a greater degree of corporate responsibility as well as having our 44 States that already have legislation prohibiting or restricting the sale of tobacco to minors indeed enforce those laws.

It is our impression, from our knowledge of this, that the enforcement of these laws is not as vigorous as it should be.

Also, as I mentioned, I have written to convenience store national chains urging that they strictly observe the law in this effort.

So I think we need to be sure that we are not, through our laxity, sending the wrong message to our young people.

Senator HATCH. Dr. Sullivan, do you feel that it is a proper role of Government to oversee the additives that are placed in tobacco products?

Secretary SULLIVAN. Our concern, Senator Hatch, frankly is this: For us to regulate the use of tobacco as well as to oversee attitudes, we are concerned that this would suggest that we believe that under certain conditions or with certain monitoring, that the use of tobacco is safe.

We maintain that tobacco is the only legal product that kills 400,000 of our citizens every year. We would rather see our efforts concentrated on reducing and eliminating by the year 2000 all use of tobacco from our society.

Senator HATCH. Well, thank you.

I have a number of other questions, but I will submit them in writing to you.

In closing, I would just challenge the tobacco industry to heed a strong warning. I suggest that Secretary Sullivan, Senator Kennedy, and I are going to join in an effort to increase the health regulation of tobacco products, and I believe we will also join in an effort to increase the education regarding the use of those products and the efforts toward prevention.

So I would like for the tobacco industry to heed that warning because I think that this hearing is sending out the message that we are tired of hundreds of thousands of people dying every year from a product that really is addictive, as Senator Bradley has so adequately brought out here today.

Secretary Sullivan, I want to compliment you for the way you have handled these matters with regard to Uptown and Dakota. I think it is reprehensible for the tobacco industry to take advantage of these groups the way that they have done, and it bothers me a great deal that they would even consider doing some of these things.

I just again want to thank you for your leadership and hope you keep it up.

Secretary SULLIVAN. Thank you.

The CHAIRMAN. Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman.

Mr. Secretary, I am going to repeat one more time the impression you made on those of us who are on the Finance Committee for your first hearing when asked by one of our members what was the one thing you wanted to be remembered for, and the answer was: "Changing the values or the attitudes of people of this country place on the definition of health; in other words, the personal responsibility issue."

I also want to compliment you on what you said about hospitals being smoke-free. I will always remember the example I had about a year and a half ago, taking the then-assistant secretary of health out to Minnesota for a hearing on health, and we had one of the hearings in the cafeteria of one of our hospitals. When we walked into the cafeteria at break time, there had to have been 25, 30 employees sitting there smoking.

And so I didn't know quite how to explain it to the assistant secretary, but my legislative assistant just walked in and said, "Anybody who wants to smoke, get out of here." And she had no authority to do it, but she did, adding, "Anybody who wants to smoke, get out of here. We're having a hearing on health."

So I am pleased that you addressed that particular subject.

But you also said something about the culture of character in your statement, and I wonder if you wouldn't elaborate on that just a little bit.

Secretary SULLIVAN. Yes, Senator Durenberger, I would be pleased to.

It is important for us to recognize, first of all, that of the major causes of death and disability in our society now, the top 10 causes—cancer, heart disease, violence, accidents, drug abuse, alcohol abuse, etc—these are all influenced by personal behavior.

We cannot rely on having a medical system to simply come in after the fact once individuals have abused their bodies by inappropriate health behavior and then expect to be patched up and made whole. First of all, that is not going to happen. Second, we don't have the resources to do that. And third, we spend more money than any other Nation on our health care system, but yet we are not the healthiest Nation.

One of the major reasons for that is our health behavior. So for us to make the progress that I know that we can make and that we want to make and hopefully we will make, it is really going to require active participation by our citizens themselves in deciding not to smoke or use drugs or abuse alcohol.

And certainly we need to reduce the violence in our cities through child abuse, spouse abuse, etc. We need to indeed ensure that we are not compounding the problems that we are trying to deal with by ignoring the very real responsibility and real impact that our citizens themselves can have in improving the status of the health of our Nation. This will not only result in a healthier citizenry but it will also save money in our health system, money that can be spent on other needs, unmet needs that we do have. We have our 31 million uninsured citizens, etc.

So, clearly, for us to have the kind of impact that I know that we can have, we need to have our citizens understand that there are a lot of things that they can do to maintain their health and promote their health and that of their family and their friends and their colleagues. Our companies need to promote health behavior among their employees.

So, clearly, we can do a lot better, but we need to have an informed citizenry to work with us in that regard. So that is really what I am referring to.

Senator DURENBERGER. In that respect—and I came in at the point when you and the chairman were discussing an area that you agreed to differ on in terms of television and the young, and I want to tie the two together—television is by far the most powerful medium of information, education, influence, cultural character, whatever in our society. My impression is that it is a wonderful medium, but it never does anything for free when anybody is watching. And if I watch the news at 11 p.m. around here, I get as much commercial message as I get news. But if I get up early on a Sunday morning, I am getting a whole lot of public service.

So I am just wondering if the debate over public service messages versus commercial messages isn't really an inappropriate debate unless, in effect, you mandate that there is more public service message has to come across during the time that people are watching.

You could argue that the kids are all up early in the morning. But that only goes up to a certain age, and this is the question I am trying to form to ask you.

There is a certain age in the current development of the young when immaturity starts to get prolonged by their environment, when a variety of what we are now calling dependencies, some of them premised on addiction, start getting built in, when a dependency on a substance of some kind or inappropriate relationships or whatever becomes a substitute for the kind of proper relationships that young people ought to have. Often that is equated with folks reaching 13 and sometimes it's getting a little bit older.

But I wonder if, as our chief health officer, you might speak to the current importance of that particular issue, that there is a huge vulnerable population out there, and whether it's tobacco or it's alcohol or it's currently illegal chemical substances, that there is a lot more than just revising our culture that we need to do. Maybe you have some thoughts on that.

Secretary SULLIVAN. Yes, Senator Durenberger. Let me say this: I think there is no question that television is a tremendous purveyor of information in our society, and it is very powerful and very effective in that. So indeed I think the disagreement or difference, I would rather say, with Senator Kennedy is simply really one of a budgetary difference.

You see, I believe that we are a capitalistic country. We provide a mechanism for companies, including television companies, to make a profit. And that's fine; that's the way it should be. But they don't operate in a vacuum. They are part of our society. They owe the society what they can do to help make it a better society.

So I don't think we have to apologize for expecting the television companies to be responsible corporate citizens and help get health messages across to our public, particularly when we are in such desperate straits compared to other Nations.

We rank 22 among the Nations of the world in infant mortality, in spite of the fact that we spend almost $2,200 annually per capita on health care when the number two country, Canada, spends only $1,400. That means that we are not spending our money wisely. We need to reorder the way we spend our money.

Certainly, emphasis on health promotion and disease prevention is part of that. But I say our television and other media companies really do have a responsibility to the society. They are organized in such a way that they can make a profit. It is not asking to much of them to contribute something to the betterment of that society, particularly when we have such awful problems that we are trying to deal with. They can't walk away and say, "This is not part of my problem." In the same way, I say that individual citizens have a responsibility themselves; people have a responsibility to each other and their community, but our businesses also have a larger responsibility to our society.

I'd like to see them and challenge them to put some of those ads on in prime time. They are not going to go bankrupt. They certainly do very well in our society, and no one would wish it otherwise. But they do have a responsibility to indeed help the society that makes it possible for them to make those profits.

Senator **Durenberger**. How about programming that plays to the addictive propensities of the young?

Secretary **Sullivan**. Well, I certainly think we need to learn more about why we have such a problem in our society with the attraction of addictive drugs. We have some research going on out at our Alcohol, Drug Abuse and Mental Health Administration, because we certainly do have a major problem where we are the major consumer of illicit drugs that are produced compared to other nations of the world.

We certainly do have some fundamental questions that we need to find answers to as to why that is, and certainly, research as to ways we can somehow interrupt that propensity for addiction or the seduction that is underway here in terms of use of illicit drugs, certainly, I would say we want to do that. But I think we certainly need to learn more about why it is we have such a problem in our society, and in a society that is successful in so many other ways. So clearly, I am concerned about that.

The **Chairman**. Just a final few questions, Mr. Secretary, again on the issue of education.

The tobacco industry itself maintains there is no further education necessary because the dangers of tobacco use are universally known. How would you respond?

Secretary **Sullivan**. I couldn't disagree with that more, Mr. Chairman. We have the data to show, as was indicated earlier. We have a significant number of our citizens who still don't have the message, who still do not understand that. We have seen that in many other areas as well. So I think to maintain that we don't need more education is absolutely false and erroneous because we have the data to show otherwise.

We need to strengthen and expand and continue our educational effort—not simply this year or next year, but far into the future.

The **Chairman**. Currently, the public is not informed about the additives in the tobacco products they use, although they are informed about the additives in food and cosmetics. Doesn't it make sense the public should know what is in tobacco products just as they know what is in other products that they use?

Secretary **Sullivan**. Yes, Mr. Chairman. I believe that currently, whereas the tobacco companies are obligated by law to provide that information as to a listing of additives to us, the law does not—because this is considered proprietary information—we do have the ability to convey that information to appropriate committees of the Congress, but beyond what the law States, I would certainly State that as the Nation's chief health officer, it is indeed desirable and hopeful that we will be able at some point indeed to inform the public fully about the additives.

The other thing I would say here is that what is required by law now from the tobacco companies is simply a listing of the additives and not information about their concentration. We have asked for that information about the concentration of various additives because then we can make a more accurate assessment of the risks of tobacco use. But certainly I would agree that an informed consumer is our best consumer, and we would want to do everything that we can to get that information to the public.

The CHAIRMAN. Well, what has been the reaction of the tobacco industry when you have made that request? They are not obligated under law at the current time.

Secretary SULLIVAN. We are waiting for a response at this moment, Mr. Chairman, so I can't say. Hopefully, we will get that information, but thus far we have made the request, and we are waiting for the response.

The CHAIRMAN. Well, just so the record is clear, it is my understanding that in the 1984 Act, the Cigarette Education Act required the companies to give the secretary the list of additives to their products, and the law requires that the additives be listed so as not to identify which company or even which brand has which additive. There is no requirement to reveal the quantity of additive. The law requests that the secretary report to Congress periodically "information pertaining to any such ingredient," meaning additives, "which in the judgment of the secretary poses a health risk to cigarette smokers."

A tobacco company representative told us last week that there haven't been any reports that these additives were hazardous to health, so there must be no problem. Are they correct?

Secretary SULLIVAN. That's not correct, Mr. Chairman. Again, we have made a request for the quantity of these additives, which we have not received. For us to make risk assessments, it would be helpful to have that information concerning the quantity of these.

But I would also want to State that in a sense the additives are really peripheral. The problem is the tobacco itself. I would say additives are not going to make the tobacco safe, and we are concerned about doing everything we can to reduce the consumption of tobacco by our citizens because of the death and illness caused by the use of this product.

The CHAIRMAN. Well, this is protected information under the 1984 legislation, but it is fair to say in characterizing it that all it is is a list of various chemical names alphabetically and then the service registry number—page after page of effectively useless information from a public policy point of view.

Would you not agree with me?

Secretary SULLIVAN. Yes. Certainly, we are not able to make accurate evaluations without knowing the quantity of those additives and indeed——

The CHAIRMAN. And in which product.

Secretary SULLIVAN. Yes. And the law doesn't give us that authority.

The CHAIRMAN. Don't you believe that the American public would be entitled to know that kind of information? Shouldn't they be able to know tar and nicotine levels in various cigarettes? Shouldn't they be able to have that kind of information?

Secretary SULLIVAN. Mr. Chairman, I would say this. We certainly are moving very vigorously on food labelling with the idea precisely that our citizens should know the content of the foods that they consume. So it would certainly seem appropriate and consistent to also know what is in the tobacco that they are consuming.

The CHAIRMAN. Well, I'll leave that answer just where it is.

Let me just point out—and I imagine you know, Mr. Secretary—that we have in the budget of the United States 70-odd pages with regard to your Health and Human Services Department. There is not even one mention of tobacco in here. We are very much aware of the role of OMB and have been around here long enough to know their insidious role in terms of public health issues. I say that, really, over a long period of time, Republican and Democrat members alike. They don't have the trained personnel down there, and the ones that they have too often, with certain important exceptions, but too often, have not been there to protect the public health.

Should we draw any conclusion from that fact that tobacco was not even mentioned in the whole request? We understand that these are allocations of resources, but resources really indicate priorities—at least they do in this town. Should we draw any conclusions from the fact that it hasn't been mentioned in the report?

Secretary SULLIVAN. Actually, Mr. Chairman, let me say this. Although it may not be mentioned, we are strongly committed in our Department to programs to reduce consumption of tobacco by our citizens. We do spend approximately $85 million annually on programs designed to do that, including our Office on Smoking and Health at the Centers for Disease Control, which is primarily a public education office which also works with State and local governments and private organizations.

Our National Cancer Institute spends approximately $40 million annually on efforts to inform the public about smoking as well as smoking cessation programs, and I believe some $35 million is also spent by our Alcohol, Drug Abuse and Mental Health Administration on programs on research to try and find ways to more effectively intervene with anti-smoking efforts.

So although we may not be mentioned in the budget, we certainly have a strong program within our Department, and not only I but other members of my Department will be speaking out vigorously on these issues, and we are looking for ways to expand those efforts as much as we can.

The CHAIRMAN. Well, I am absolutely convinced that it is a high priority on your list. I just hope that it will be a higher priority on the Administration's list.

Finally, in your exchange with Senator Durenberger and others—Senator Hatch, briefly—on the question of paid advertising, I think an enormously convincing case is made by the AIDS Commission report. They took a very hard look at it, and they reached some very tough-minded conclusions and gave compelling reasons why they believe that paid advertising is a key way to go. We have authorized that function in our AIDS legislation. But there have not been any resources put there, any funding for it, or even the desire by the administration to address the issue in the way that we have outlined, but I would hope you might have an opportunity to look through those particular provisions in the AIDS Commission report. It is really an excellent report.

But most of all, we look forward to working with you, Mr. Secretary. We thank you very much for your testimony. It has been important testimony. I think the American people are listening to this and are well-served by your leadership on this issue. We are looking forward, because we are serious about this legislation, and we are going to report it out of this committee and get action on it and permit members of the Senate to vote on this issue.

We thank you very much.

Secretary SULLIVAN. Thank you very much, Mr. Chairman and Senator Durenberger. It has been a pleasure to be here with you.

I would just point out one last statement in leaving, that since these hearings began, by my calculation, approximately 75 individuals have died because of use of tobacco—just to let you know that the clock is always ticking, and certainly we want to do everything we can to inform our citizens about the dangers of tobacco use. And certainly, we look forward to working with you and your colleagues on this committee in that effort.

The CHAIRMAN. Could I just ask one final question, which I should have asked earlier. In my opening statement, I remarked about the difference in benzene levels in Perrier water versus in cigarettes, and I pointed out that there were 16 to 26 parts per billion in Perrier but according to the surgeon general's report there are 11,000 to 43,000 parts per billion, or 2,000 times as much in cigarettes. And yet cigarettes stay on the shelf.

What can you tell us about that anomaly?

Secretary SULLIVAN. Mr. Chairman, I think that what we are dealing with in the case of cigarettes is the fact that we have a product, that the purveyors of that product really are not concerned about the health of the American people.

I commend the Perrier Company for taking a responsible step in withdrawing their product when they found the concentration of benzene in it. They didn't wait for the FDA to act; they acted responsibly themselves.

I think that contrast shows you just what kind of corporate irresponsibility we are dealing with when it comes to the tobacco companies.

We have a product that has been around for many decades here in America, that we now only in recent years, in the last 25 years or so, have we really gotten out the information that shows that this is a product that is dangerous to the health of our citizens, and we are unfortunately fighting the effort of trying to remove this product from our society when we have a large number of people who are addicted to it, we have a tremendous job of still educating others that this product is harmful, and we have the influence of the tobacco lobbyists themselves to try and keep this product on the market.

So I think those differences in perspective—one corporate company that is responsible wants to do everything to protect the health of its consumers; the other company not showing that level of corporate responsibility. So that is what we are dealing with, and certainly that is why I am determined to do everything that I can to educate our citizens about this and to urge our State and local officials to enforce the laws that are there and to work with other governmental bodies that are looking at legislation that we certainly would work with them to inform them of what exists in other localities.

The CHAIRMAN. Thank you very much, Mr. Secretary. We are delighted to have you here.

Our next panel includes Dr. Alan Blum, who is with the Department of Family Medicine, Baylor College of Medicine, Houston, TX. He is a very tireless worker out in the vineyards on the issue of advertising and public information, and we are very, very fortunate to have him here today.

If you would, Dr. Blum, I am going to yield to Senator Durenberger, who has another committee meeting at the present time and has a constituent who will be coming up after you. I would like to call on him now so he can introduce the Commissioner of Health of the Minnesota Department of Health, and we'll include that introduction at the appropriate place in the record.

Senator DURENBERGER. Mr. Chairman, thank you very much. I appreciate your doing this. We do have a hearing on underground storage tanks, and your mention of Alan Blum as a worker in the vineyards reminds me, by way of an introduction to Minnesota, that we have one winery in Minnesota, even though it is a relatively warm State, and on the label on their bottles it says, after the name of the company, "Grown where the grapes suffer."

Now, it is my pleasure, having said that, to introduce Sister Mary Madonna Ashton, who I assume will follow Alan Blum. She is Minnesota's chief health officer. In addition to her many program responsibilities, she has disease prevention and control, maternal and child health, health promotion and education, environmental health. She has been in this position since 1983, which is a longevity record in a State like Minnesota.

She has overseen the development of major new programs dealing with tobacco use and other health promotion issues, cancer surveillance, environmental epidemiology, the regulation of health maintenance organizations, the protection of Minnesota's drinking water.

As a member of the Association of State and Territorial Health Officials, Commissioner Ashton chairs the National Committee on Tobacco or Health. She also serves on the Board of Scientific Advisers of the National Cancer Institute.

She is here today because of her longstanding involvement in promoting nonsmoking in Minnesota. She comes to that professionally, but she also comes to that because Minnesota is the leader in the Nation in nonsmoking activity—and hopefully as a model for the rest of the Nation.

Her accomplishments in Minnesota are many. In 1975, Minnesota sponsored the Nation's first statewide smokeout, later to be adopted by the American Cancer Society as The Great American Smokeout. In 1974, Minnesota passed the Clean Indoor Air Act, to provide a smoke-free work environment, the Nation's first comprehensive clean indoor air legislation. In 1985, Minnesota passed the Nonsmoking and Disease Prevention Act, which among other things resulted in smoke-free schools and the development of a nonsmoking media campaign. In 1987, Minnesota prohibited free *distribution* of all tobacco products, and in 1990, Minnesota required all daycare premises and all health care facilities to be smoke-free.

So Mr. Chairman, I look forward to Commissioner Ashton's testimony. As you and Senator Hatch and other members of this committee work on nonsmoking legislation, I trust that your good judgment in asking the Commissioner to be with us today reflects your desire to follow the Minnesota model in our national legislation.

The CHAIRMAN. Very good.

Commissioner Ashton, I understand you have a 12 o'clock flight, and I will tell you we can get you out of here by 11:30 so you can make it. So if that is agreeable and Dr. Blum wouldn't mind, I think we'll do that. Let me ask you do you have transportation to the airport?

Sister ASHTON. Yes, I do. Thank you.

The CHAIRMAN. All right, so they are standing by with the engines running down at the door.

Senator DURENBERGER. Northwest doesn't wait, let me tell you.

The CHAIRMAN. I think you can make it. But we want to hear from you, and your complete written statement will be included in its entirety, and whatever remarks you want to make to highlight it now, we'd welcome.

STATEMENTS OF SISTER MARY MADONNA ASHTON, COMMISSIONER OF HEALTH, MINNESOTA DEPARTMENT OF HEALTH; AND DR. ALAN BLUM, DEPARTMENT OF FAMILY MEDICINE, BAYLOR COLLEGE OF MEDICINE, HOUSTON, TX

Sister ASHTON. Thank you very much, Mr. Chairman, and thank you, Senator Durenberger.

As Senator Durenberger mentioned, I am not only the Commissioner of Health for the State of Minnesota, but I am also the Chairman of the Association of State and Territorial Health Officers' Committee on Tobacco or Health. In this regard, I represent our Nation's State health officers.

I bring with me today a strong and heartfelt endorsement of the Tobacco Product Education and Health Protection Act. This excellent proposal offers strategies for tobacco control that are precisely what research and experience tell us will work.

Not only is this bill comprehensive, but also it is targeted, seeking to affect those who are at greatest risk of tobacco-related health problems. I cannot emphasize enough how important it is that we take a comprehensive approach to tobacco control, because educating people about being tobacco-free is much more difficult than selling them a pack of cigarettes. It simply isn't enough to inform people about the health risks of tobacco, and no single program in the schools or the mass media or in any one State can single-handedly change our social norms about smoking.

Ultimately, we have to change the social climate that allows or even encourages people to smoke. We need rules about smoking in public and in workplaces. We need to get serious about limiting our children's access to tobacco. And we need to reach out to high-risk groups such as school dropouts, young women, adolescents and minorities.

The Tobacco Product and Health Protection Act is just what we need to make this happen, and I can tell you that the timing of this bill is ideal. All of the States are interested in this effort. The groundwork in establishing relationships with all of the important players has already been done.

Recently, our ASTHO Tobacco or Health Committee identified a tobacco control contact person in each State health department, and in March we are gathering these contact people together to begin networking to assist each other with tobacco control.

We also have worked closely with the Centers for Disease Control, the National Cancer Institute—which incidentally has a main strategy of achieving a goal of reducing cancer deaths by 50 percent by the year 2000, by targeting smoking. We have also worked with the American Medical Association, the American Hospital Association, the National School Boards Association, and the American Lung, Heart and Cancer groups.

In the past 2 years, our Tobacco or Health Committee also has put together guidelines for developing tobacco control programs in each State. This publication came out the end of December, and already 12,000 copies have been distributed to various organizations as well as to all the States.

We are ready to move into more aggressive programming. What we need now are the resources and directions provided by the Tobacco Product and Health Protection Act.

I speak from personal experience in Minnesota when I endorse these strategies. Over the past 6 years, we have successfully mobilized the State of Minnesota in an effort to discourage our citizens from smoking, and we have clear indications that our programs are working. Between 1985 and 1988, which were the first 3 years of our program, adult smoking rates declined from 29 percent to 23.5 percent. How did we do it? We put programs in schools, hospitals, local health organizations and workplaces. We use high-quality advertising and buy time on radio and TV. We use research to target our messages carefully, and we emphasize prevention.

In Minnesota, we have learned that there are some key ages in people's lives when they make decisions about whether or not to use tobacco. These are ages 10 to 15, and in addition for women, ages 18 to 24. Consequently we have chosen to focus our efforts on these crucial periods in the lives of young people. The key method of targeting messages to these specific groups is advertising.

Since TV and radio messages are much cheaper per person reached, they are more cost-effective than the kinds of face-to-face instruction that take place in schools and communities. But it is the combination of the mass media, school and community programs, along with no smoking rules and cigarette taxes, that we have found have the greatest impact.

Minnesota is not alone in seeing the importance of fighting this Nation's smoking epidemic. Not only are there major tobacco control efforts under way in States like Colorado, California and Michigan, but also new initiatives are cropping up constantly.

For example, in Indiana, there is a new law restricting smoking in public places like hospitals and schools.

Vermont law now requires all workplaces to restrict smoking.

Washington State is considering bills limiting smoking in hospitals, daycare centers and restaurants, and is seeking legislative support for nonsmoking programs.

South Carolina's hospitals and health departments are now totally smoke-free by law.

In our leading tobacco-producing State, North Carolina, local communities are beginning to take some action. As you heard earlier, Greensboro recently passed a clean indoor air ordinance.

And Mississippi, which has one of the highest smoking rates in the Nation, has just begun their first ever school health program, and it is on tobacco.

As these States are learning, successful programs require money. In Minnesota, an increase in our cigarette tax gave us the opportunity to get programs off the ground and gain the experience we needed to understand what works and what doesn't. With more resources, we would target our efforts even more completely and include the high-risk groups that are so hard to reach, such as minorities and school dropouts, and we would include smoking cessation programs as well as prevention.

S. 1883 not only provides an excellent framework for tobacco control programs, but also provides the resources for States to implement these programs. The impact of this bill on our Nation's health could be tremendous.

The Federal excise tax on cigarettes has been 16 cents per pack since 1983. I might suggest, as was earlier done also, that an increase in this tax could easily fund these programs without hardship to anyone. And in fact a tax increase has been shown to lead to a significant decrease in tobacco consumption by adolescent boys.

I thank you for the opportunity of being here today to represent the Nation's State health officers. The passage and implementation of this bill would be a great step toward meeting our goal of a smoke-free society by the year 2000. Thank you.

[The prepared statement of Sister Ashton follows:]

PREPARED STATEMENT OF SISTER MARY MADONNA ASHTON

I am Sister Mary Madonna Ashton, Commissioner of Health for the State of Minnesota; and I also serve as chair of the Association of State and Territorial Health Officers' (ASTHO) Committee on Tobacco or Health. In this regard, I represent our Nation's State health officers.

Like others here today, I too am extremely concerned about the effects of smoking on young women, particularly those aged 18–24. More of these young women smoke than do young men of that age, and more of them smoke than do all adults. For example, in Minnesota 37 percent of women aged 18–24 are smokers as compared to 23.5 percent of the general adult population (MDH Women's Survey 1989).

Once women start to smoke, they are less likely than men to quit. More than half of the 18- to 24-year-old Minnesota women who smoke say that the most important reason they smoke is because they are "hooked," and 90 percent of them say they have recently thought about quitting (MDH Women's Survey 1989).

National data show that among high school seniors, female smoking rates have exceeded those of males by 2 to 6 percent since 1977. And among college students, smoking rates of females and males are also disparate. For example, in 1985, 26 percent of college women and 19 percent of college men reported having smoked during the past 30 days (USDHHS 1986a).

Furthermore, lung cancer has now overtaken breast cancer as the leading cause of death among women. In addition to causing lung cancer deaths, smoking increases the risk of developing diseases that are specific to women, such as cervical cancer, and increases the risk of heart attack for women who also use oral contraceptives. Smoking during pregnancy increases the risk of prematurity and low birth weight, and after the baby is born, the infant of a smoking mother is at increased risk of respiratory disease compared to the infant of a nonsmoking mother.

And women, like adolescents and minorities, are increasingly being targeted by the tobacco industry, so they are vulnerable in that sense as well.

I bring with me today a strong and heartfelt endorsement of the Tobacco Product and Health Protection Act. This excellent proposal offers strategies for tobacco control that are precisely what research and experience tell us will work. Not only is this bill comprehensive—suggesting a range of strategies including regulation, education, prevention and cessation—but also it is targeted, seeking to affect those who are at greatest risk of tobacco-related health problems.

I can't emphasize enough how important it is that we take a comprehensive approach to tobacco control because educating people about being tobacco-free is much more difficult than selling them a pack of cigarettes. It simply isn't enough to inform people about the health risks of tobacco, and no single program in the schools, or the mass media, or in any one State can single-handedly change our social norms about smoking.

Ultimately, we have to change the social climate that allows or even encourages people to smoke. Our best chance for success is to attack the problem from several sides at once. We need rules about smoking in public and in workplaces; we need to get serious about limiting our children's access to tobacco; and we need to reach out to high-risk groups such as school dropouts, young women, adolescents, and minorities.

The Tobacco Product and Health Protection Act is just what we need to make this happen. This bill can greatly assist us in mobilizing the nation for tobacco control. And I can tell you that the timing of this bill is ideal. All of the States are interested in this effort. The groundwork in establishing relationships with all of the important players has already been done.

Recently, our ASTHO Tobacco or Health Committee identified a tobacco control contact person in each State health department, and in March we are gathering these contact people together to begin networking to assist each other with tobacco control. Not only do we now have this nationwide network of contacts, but we also have worked closely with the Centers for Disease Control, especially in the area of data collection. We have good working relationships, too, with the National Cancer Institute where tobacco control is seen as a main strategy to achieve their goal of reducing cancer deaths 50 percent by the year 2000. Other national organizations, such as the American Medical Association, the American Hospital Association, the National School Boards Association, and the American Lung, Heart and Cancer groups have displayed support also in working toward a smoke-free America.

In the past two years our Tobacco or Health Committee also has put together guidelines for developing tobacco control programs in each State. Now that we have established these guidelines as well as the significant relationships I have mentioned, we are ready to move into more aggressive programming. What we need are the resources and direction provided by the Tobacco Product and Health Protection Act. This bill's outline of proposed actions is very much in accord with our reading of where the needs in this country are.

I speak from personal experience in Minnesota when I endorse these strategies. Over the past six years, we have successfully mobilized the State of Minnesota in an effort to discourage our citizens from smoking, and we have clear indications that our programs are working. Between 1985 and 1988, which were the first three years of our program, adult smoking rates declined from 29 percent to 23.5 percent (MDH Behavioral Risk Factor Surveillance).

How do we do it? We put programs in schools, hospitals, local health organizations, and workplaces. We use high-quality advertising and buy time on radio and TV. We use research to target our messages carefully. And we emphasize prevention.

As a result, the majority of Minnesota schools have become smoke-free; and more than 95 percent of them participate in a State-aid program that funds programs that help children learn how to say "no" to tobacco.

We have protected our youngsters by making it illegal to distribute free samples of tobacco products. And in the past year, several Minnesota communities have placed restrictions on the sale of cigarettes in vending machines to remove them as a prime source of cigarettes for adolescents.

We also have an innovative program of grants—to local health agencies and private groups across the State—that has made possible an array of creative projects ranging from health fairs to quit-smoking classes in local businesses, hospitals, and schools. One such effort was aimed at helping hospitals and chemical dependency centers in the State go "smoke-free." And now all of our hospitals, clinics and doctors' offices are smoke-free by law.

In Minnesota, we have learned that there are some key ages in people's lives when they make decisions about whether or not to use tobacco. These are ages 10-15 and, for women, ages 18-24. About one-third of the Minnesota women aged 18-24 who smoke became regular (daily) smokers at age 18 or older (MDH Women's Survey 1989). In a 1986 Minnesota survey, 18 percent of ninth graders reported having smoked during the past week, and in 1988, 15 percent reported doing so (MDH Ninth Grade Survey). Of further concern are the recent data indicating that boys are starting to use chewing tobacco at nearly the same rate as they smoke. In 1986, 15 percent of ninth grade males surveyed in Minnesota reported having used smokeless tobacco in the past week (MDH Ninth Grade Survey).

We have chosen to focus our efforts on these crucial periods when young people are actually deciding whether or not to smoke. We emphasize prevention because, while it is indeed important to offer help to smokers who want to quit, with limited resources it is simply easier and more cost effective to stop people before they start smoking.

The research acknowledges that it is far more cost effective to prevent the onset of smoking among adolescents than it is to change the habituated behavior of adults (USDHHS 1984; MDH 1984). Because we may be more successful in trying to prevent adolescents from becoming smokers than in helping adults to quit, smoking prevention is an important health promotion goal (McCaul and Glasgow 1985).

The difficulty of changing habituated or addicted behavior is exemplified by the fact that relapse rates for those who have quit using alcohol, heroin, or cigarettes are very similar (USDHHS 1988). The recent surgeon general's report on nicotine addiction (1988) cited research showing that most treated smokers relapse by three month follow-up and that among a wide range of treatments, relapse rates as high as 75-80 percent could be expected among smokers who had achieved initial cessation.

Beyond avoiding addiction, the research shows that there are significant other health benefits to be gained by preventing and/or delaying an adolescent's tobacco use (USDHHS 1986b):

1. The earlier one starts to smoke, the greater the likelihood of early mortality from a smoking-related disease.

2. The earlier one starts, the greater likelihood of becoming a heavy smoker. Those who begin smoking at age 14 or younger smoke significantly more cigarettes per day than those who started at age 18 to 20. Heavier smokers are less likely to quit and have more smoking-related illness and mortality than lighter smokers.

3. Among smokers who started before age 20, the younger they began smoking, the more likely they are still smoking. Research suggests that those who begin smoking early are less successful at quitting.

Advertising is a key method of targeting anti-smoking messages to specific groups of young people. In Minnesota, we have learned that through the mass media, we can reach almost everyone at a relatively low cost per person.

There is no doubt that the mass media have a highly influential place in our lives and the lives of our children—particularly in light of the high levels of media used by young people. Ninety-eight percent of all U.S. homes have television sets, and Americans' television use averages six hours a day. Ninety-eight percent of all U.S. homes have radios; the average home has more than five radios, and radio reaches 88 percent of the teenage population on an average day (Price and Allensworth 1979). Typically, American children spend more time watching TV than they spend at any other single activity, including time spent at school or with friends, and research suggests that behavioral learning does occur during viewing (Flay and Sobel 1983). Furthermore, the youngsters who are more likely to be exposed to media messages and to find them credible are similar in many ways to those at higher risk for smoking (National Institute of Mental Health 1982).

Minnesota data corroborate these findings. On a typical school day in Minnesota, a ninth grader spends an average of three hours listening to radio and an average of four hours watching TV. Of these youths, those who are smokers or tobacco chewers, and those who are at high risk of becoming regular tobacco users, spend the most time watching TV (TSTP Ninth Grade Survey, fall 1986).

Since TV and radio messages are much cheaper per person reached, they are more cost-effective than the kinds of face-to-face instruction that take place in schools and communities. But it is the combination of the mass media, school and community programs along with no-smoking rules and cigarette taxes that we have found have the greatest impact.

Successful programs require money. In Minnesota, an increase in our cigarette tax gave us the opportunity to get programs off the ground and gain the experience we needed to understand what works and what doesn't.

Minnesota is fortunate to have an enlightened Legislature willing to dedicate some of the cigarette tax revenue to tobacco control. We know that most States have not been so fortunate. Even so, Minnesota's tobacco control efforts are limited. With more resources, we would target our efforts even more completely and include the high risk groups that are so hard to reach, such as minorities and school dropouts. And we would include smoking cessation programs as well as prevention.

The bill before us today, S. 1883, not only provides an excellent framework for tobacco control programs, but also provides the resources for States to implement these programs. The impact of this bill on our Nation's health could be tremendous.

The Federal excise tax on cigarettes has been 16 cents per pack since 1983. I might suggest that an increase in this tax could easily fund these programs without any hardship to anyone. And in fact a tax increase has been shown to lead to a significant decrease in tobacco consumption by adolescent boys.

I thank you for the opportunity of being here today to represent the Nation's State Health Officers. The passage and implementation of this bill would be a great step toward meeting our goal of a smoke-free society by the year 2000.

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LETTER FROM THE MINNESOTA DEPARTMENT OF HEALTH

Minneapolis, Minnesota,
February 22, 1990.

The Honorable EDWARD M. KENNEDY, *Chairman*
Committee on Labor and Human Resources,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: Thank you for the opportunity to testify on behalf of S. 1883, the Tobacco Product Education and Health Protection Act. If passed and funded, it will make a significant contribution to ridding the country of an addictive and lethal drug.

Since I had to leave the February 20 hearing early, I am following up with this letter to let you know, in some detail, about Minnesota's paid anti-tobacco advertising—particularly as it relates to your discussion with Dr. Sullivan during the hearing.

In Minnesota, we have found a workable and cost-effective balance between paid and "public service" advertising. For 3 years now we have been able to negotiate placement of one free "bonus" ad for every ad we purchase on television and radio. And the bonus spots we receive are not at 2 o'clock in the morning! Like our paid spots, the bonus spots are placed in time slots when our target groups of adolescents and young women are most likely to be watching and listening. We neither seek nor accept placement of our bonus spots in traditional public service times.

This successful compromise between paid and public service advertising is possible for several reasons. We buy a considerable amount of advertising on radio and television each year and plan to do so for the foreseeable future. This puts us in a good position to negotiate with radio and television stations for free spots. We also work with large local advertising agencies who wield considerable media-buying clout, i.e., they buy a lot of advertising so they are in a good position to bargain with radio and television stations for good deals. Our advertisements are of high quality, so the stations enjoy playing them and often place them in prime unsold slots. For example, in Minnesota one of our spots ran during the Super Bowl—a very desirable and expensive time slot that we didn't pay for because our advertisements serve a good cause and meet the media's needs for serving the public.

For these reasons, we have consistently been able almost to double the value of our ad placement budgets. In addition, we use market research, such as focus groups, to formulate our ads and we conduct follow-up surveys to measure the ads' effects on the intended audiences. As a result, we know that our ads reach and have, at some level, an impact on their intended target groups.

If you or your staff have any questions or would like more information please feel free to contact me at (612) 623-5460 or Kathy Harty, Manager of our Section for Nonsmoking and Health at (612) 623-5500.

Sincerely yours,

SISTER MARY MADONNA ASHTON
Commissioner of Health

The CHAIRMAN. Thank you.

Just very briefly, some cities and States have banned outdoor tobacco advertising. Do you think the State and local governments should be able to have control over this?

Sister ASHTON. I think it would be great if the Federal Government did something about it. I think that would be most helpful. But we need to do it, whatever level of government.

The CHAIRMAN. But if the Federal Government isn't going to take unilateral action in terms of outdoor advertising and advertising generally, do you think that the States and local communities ought to be permitted to take what action they think is essential to protect the public health of the people in those communities?

Sister ASHTON. That would be most helpful, Mr. Chairman.

The CHAIRMAN. And let me ask you, do you agree that people should have a right to know what additives are in the cigarettes that they smoke?

Sister ASHTON. Yes.

The CHAIRMAN. And can you tell us what kind of assistance you get from the Federal Government to help you in this battle? Have you been able to get very much help and assistance?

Sister ASHTON. We have been helped a great deal by the Centers for Disease Control and their Office of Nonsmoking and Health. They have very definite limitations, however, on their resources. They help us with educational materials and have given us a small grant to do an evaluation of our program in Minnesota for which we are very grateful.

So I am very happy to see in the bill that you are going to establish a center within the Centers.

The **CHAIRMAN**. They do have the experience, and they do have the background, and they do have access to the information.

Sister **ASHTON**. And they know how to work with the State health departments very well.

The **CHAIRMAN**. That is very good news.

We thank you very much. If other members have questions, we'll send them to you.

I think with a good Hail Mary, you'll make it out there.

Thank you very much.

Sister **ASHTON**. Thank you.

The **CHAIRMAN**. Dr. Blum.

Dr. **BLUM**. Thank you, Mr. Chairman, and I would like to thank also your very helpful staff.

My name is Alan Blum. I am a family doctor in Houston, TX, and the former editor of *The Medical Journal of Australia* and the *New York State Journal of Medicine*, where 7 years ago, I produced the first issues of a medical journal ever devoted entirely to consideration of the world tobacco pandemic.

In 1977, I founded Doctors Ought to Care, or DOC, which is aimed to reach the highest level of commitment on the part of every member of the health professions to educate children and teenagers in refreshing ways about the major preventable causes of poor health and high medical costs, especially the killer habits of juvenile onset tobacco and alcohol use, which we believe are the neglected cornerstones of drug abuse.

The more than 5,000 members of DOC across the country attempt to impart consumer health information, convey positive health attitudes, and change adverse health behaviors by means of a multilayered reinforcing program of office-based, school-based, and community-wide counter-advertising activities.

It is illusory to believe that there exists in this country a major mass media effort designed to engage the public in a true understanding of the devastating economic and physical toll taken by tobacco use. To any adolescent, to read *Sports Illustrated, Rolling Stone, Spin, Newsweek, National Lampoon* or *Mademoiselle*, perhaps even in a school library, the presence of cigarette advertising clearly suggests that smoking is associated with good looks, sexiness, success and athletic ability. But bad health or even bad breath—not on your life.

Just before this hearing, Senator Kennedy, I heard of a statistic by Dr. John Slade in New Jersey. You asked earlier about consumption figures. Based on the most conservative estimates, that just 3 percent of cigarette sales are to under-age children, you are talking about $1 billion in cigarettes being bought by children each year in this country, which provides $150 million into tobacco company profits. That's about how much you are proposing in this particular bill.

DOC's distinguishing feature among health promotion organizations is its purchase of advertising space in the mass media to expose, laugh at and otherwise undermine the specific brand name imagery of the promoters of unhealthy products.

I have been invited to provide testimony at this hearing in support of this bill, doubtless because of our pioneering paid counter-advertisements that in essence fight smoke with fire.

Our premise is simple and straightforward: The No. 1 avoidable cause of death in this country is not lung cancer, not heart disease, or even smoking. It is Marlboro, the most widely-advertised product in the world, and in DOC's surveys, the kids' favorite brand.

And who are cancer's seven warning signs? No. 1, Philip Morris, makers of Marlboro; No. 2, RJR Nabisco; No. 3, Loew's; No. 4, American Brands; No. 5, Brown and Williamson; No. 6, Liggett; No. 7, U.S. Tobacco Corporation.

Generic lectures and warnings about the dangers of smoking cannot compete with the daily blitz of images for Marlboro, Camel, Winston, and the other popular adolescent brands, with advertisements that identify with teenagers' needs for autonomy and social acceptance.

Moreover, the belief that providing children with sufficient health information in school will enable them to make the right decisions fails to address the dynamic and insidious nature of tobacco advertising outside the classroom.

For the past 15 years, DOC has researched tobacco advertising as if it were a cancer-causing virus, ever changing its identity to resist attempts to eradicate it. Seldom has a tobacco advertisement in the last 20 years asked you to smoke. In fact, as they are going to do today, they are going to ask you to come over to a party or a tennis tournament.

That is what I wanted to do, is to set the stage, to show some pictures of how this industry has changed like a chameleon over the years to keep up with the idioms and the images. I want to show the way in which they have targeted young people through sports, which is a more effective way to reach children.

To do that, I'd like to just set the stage of what it was like 20 or 25 years ago, when a precedent for your bill was introduced with counter-advertising that reduced the effective cigarette sales by upwards of 12 percent in 3 years. Those were the ads that you are about to see.

But let's just go back to the age of Little Johnny, who used to call out Philip Morris. I remember that. But nobody ever stopped and asked what stunted his growth. The important characteristic of this industry is they have kept in touch with the times. And if we will, let's just go back, and use your imagination a little bit and imagine what it was like growing up as a child in the Fifties and Sixties with these kinds of images. [Videotape shown.]

Well, that's what the good news was to cigarette and pre-cigarette smokers back in the Fifties and Sixties. It was necessary, therefore, for an individual named John Banta to apply to the Federal Communication to see if he could get an application of the Fairness Doctrine that led the American Cancer Society, the American Heart Association and other organizations to produce ads like this. [Videotape shown.]

The problem with the tobacco companies was still a problem. He died 2 weeks after that commercial was made, and they couldn't stand the competition. That's why they moved in 1969 to get off of the airwaves in order to possibly reduce the application of the Fairness Doctrine. And that's when we go back and just take a look at what kind of advertising was still running along with him. [Videotape shown.]

Would they target children today? Let's take a look at what has happened in the last 20 years. And in fact this is a fairly arbitrary list of cigarette advertisements that I have produced in my own home video that I'm just going to show here today. [Videotape shown.]

It is very important to understand who Kenny Schrader is and Bill Elliott—these are supposed athletes who go to work for tobacco companies each Sunday on national television, such as this past Sunday's CBS Daytona Winston 500. Kenny Schrader is for Kodiak chewing tobacco; Harry Gaines, you are about to see with Skoal spitting tobacco. [Videotape shown.]

There is a little boy about to come into the picture—the new Winston cap.

In honor of Senator Bradley, I just wanted to show the Winston sign at the average basketball game. That is entirely, lock, stock and barrel, every single basketball stadium in the NBA that I know of has a Winston billboard at key camera angles.

Cigarette advertising is placed at the end zone precisely at the time when the only scoring at the game occurs. In U.S. major league baseball stadiums, 14 have Marlboro, 8 have Winston. Marlboro is still ahead.

This is tonight's Marlboro Soccer Cup in Los Angeles, where you can buy this as we did from a child selling Marlboro pennants; you can buy a poster. This is going virtually all to young Hispanic males who will be populating the audience tonight. More importantly, it is going around the world. This is the largest, most advertised program on television, the World Cup Soccer match that Marlboro is the key sponsor for.

This morning on National Public Radio was a marvelous story about how the Medellin Cartel is sponsoring the Colombian soccer team that is playing tonight. No mention was made about how they are playing in the Marlboro cigarettes soccer match. [Videotape shown.]

In fact, I just accidentally happened to see the Winston sign in that gymnastics competition and just though I would throw that in. [Videotape shown.]

This is just like what you can buy, made by Matel, in toy stores——

The CHAIRMAN. OK, Doctor. I think we're going to have to move on because we've got some other witnesses. I think we've gotten this part of the message.

Dr. BLUM. I wanted to conclude, Senator, by talking about what we could do this evening. If you were in Washington, you could go out and buy a Marlboro t-shirt over at the Marlboro soccer matches, or you could this evening buy a Virginia Slims t-shirt for your little baby.

That's really the message that I have tried to bring with counter-advertising to undermine that kind of imagery. What we've got to do is laugh the pushers out of town. At DOC's insistence, what we have done is to create brand name undermining ridicule.

As an example, when they talk about "Country Fresh Salem," DOC's billboards have said "Country Fresh Arsenic." The classic advertising that we have done is our "Emphysema Slims Tennis Tournament" and our "I Smoke for Smell" campaign, with different ridiculing brand names of specific imagery promoted by the tobacco industry.

To conclude, I want to emphasize that this bill will make up for lost time by immunizing the next generation against the deceptive imagery, catchy brand names and slick slogans of tobacco advertising.

The fact that the public, lulled into complacency by a media covetous of tobacco industry advertising revenue, does not fully comprehend the catastrophic nature of lung cancer, emphysema and heart disease and the enormous financial cost to families and society as a whole due to tobacco use requires that there be a concerted effort to expose cigarette advertising for the perverse propaganda that it is and thereby begin to undo the damage it continues to cause. Thank you.

[The prepared statement of Dr. Blum (with attachments) follows:]

PREPARED STATEMENT OF ALAN BLUM, M.D.

My name is Alan Blum. I am family doctor in Houston, TX. In 1977 I founded DOC, the letters of which stand for Doctors Ought to Care, with the aim of tapping the highest level of commitment on the part of every member of the health professions to educate children and teenagers in refreshing ways about the major preventable causes of poor health and high medical costs. [illegible] more than 5,000 members of DOC, representing every State in the country, [illegible] to impart health information, convey positive health attitudes, and change adverse health behaviors by means of a multi-layered, reinforcing program of office-based, school-based, and community-wide activities.

Since DOC was founded, its principal focus has been on ending juvenile-onset tobacco and alcohol use, which we and the teenagers we work with believe are the neglected cornerstones of drug abuse. DOC's distinguishing feature among health promotion organizations is its purchase of advertising space in the mass media to expose, satirize, and otherwise undermine the specific brand-name imagery of the promoters of unhealthy products. I have been invited to provide testimony at this hearing in support of this bill doubtless because of our pioneering paid counter-advertisements that, in essence, fight smoke with fire. Our premise is simple and straightforward: the No. 1 preventable cause of death in this country is not lung cancer, heart disease, or even smoking—it is Marlboro, the most widely advertised product in the world, and, in DOC's surveys, the kids' favorite brand. Generic lectures and warnings about the dangers of smoking cannot compete with the allure of imagery for Marlboro, Camel, and other popular adolescent brands that meet teenagers' needs for autonomy and social acceptance. Moreover, the belief that providing children with sufficient health information will enable them to make the right decisions fails to address the dynamic and insidious nature of tobacco advertising. For the past 15 years DOC has studied and monitored tobacco advertising as if it were a cancer-causing virus, ever-changing its identity to resist attempts to eradicate it. Seldom has a tobacco advertisement or company asked us to smoke (indeed, the models in the ads hardly ever do, and the smoke itself seems to have vanished). Instead, they invite us to join them at a party or sports event such as Philip Morris' Virginia Slims Cigarettes Tennis Tournament all this week in Washington, or the same company's Marlboro Cigarettes Soccer Cup tonight in Los Angeles, or an RJ Reynolds' Winston or Camel Cigarettes auto or motorcycle race every week-end across the country. Often such events benefit local hospitals. Truth may be good, but juxtaposition is better.

Traditional health advocates have long bemoaned their lack of financial resources to compete with the tobacco industry. But it is all the more imperative that we move beyond the vocabulary of health behavior and begin to understand the way in which the industry reaches its consumers. The first step is to make use of the simplest of marketing tools, such as a map and a calendar in order to become familiar with popular events and places. The tobacco industry has been especially adept at exploiting racial identity in defining a profitable market among ethnic minorities. In addition to their constant presence on the news, sports, fashion, and lifestyle pages of newspapers directed to Black Americans, tobacco companies are their leading advertisers. As part of a salute to "Black History Month" in February, RJ Reynolds and Philip Morris are featuring discount coupons in Ebony and other Black magazines for various brands of cigarettes, complete with pictures of famous Black scientists such as George Washington Carver. These companies also sponsor numerous Hispanic street festivals in the U.S. Brown and Williamson presents annual "Kool Achiever" awards (named for Kool cigarettes) to individuals who want to improve the "quality of life in inner-city communities."

It is illusory to believe that there exists in this country a major mass media effort designed to engage the public in a true understanding of the devastating economic and physical toll taken by tobacco use. To any adolescent who reads *Sports Illustrated, Rolling Stone, SPIN, Playboy, National Lampoon*, or *Mademoiselle*, the presence of cigarette advertising clearly suggests that smoking is associated with good looks, sexiness, success, and athletic ability. But bad health or even bad breath? Not on your life.

Although emphysema, coronary heart disease, and lung cancer caused by smoking now account for nearly 400,000 premature deaths each year and a vast amount of preventable disability in the workforce, the tobacco industry's ties to media corporations and other businesses remain healthy.

Back in the 1950's, when I would watch Brooklyn Dodgers baseball games on television with my late father, a general practitioner, he suggested that I tape record all the cigarette advertisements that appeared in association with sports events and entertainment. One day, he predicted, society would look back on our era of supposedly great scientific advances and laugh: Imagine, a nation that would condone the promotion of an irredeemably harmful, invariably debilitating, and frequently lethal product that would offer financial incentives and tax deductions to devise propaganda that would undermine the efforts of the medical profession to improve health.

When the first major reports were published in the early 1950's linking cigarettes with lung cancer, the statistics scared many people—for one reason because cigarette companies had always used statistics to show how safe their brands were. But it didn't take long for cigarette makers to figure out an answer to what they began calling "the smoking and health controversy"—The filter. Today more than 97 percent of those who smoke buy filtered brands in the belief that they are somehow smoking safer. Safer than what? Fresh air? Indeed, smoking a filter cigarette carries all the safety of jumping from the 90th story of the World Trade Center instead of the roof.

When the first surgeon general's report on smoking and health was published in 1964—by a committee of medical researchers selected by Surgeon General Luther Terry (and approved by the tobacco industry) in the administration of President John F. Kennedy, the verdict was unanimous: cigarette smoking was found to be the leading preventable cause of lung cancer and emphysema and was strongly implicated in heart disease. No minority report was written. Once again, the cigarette companies took the upper hand by increasing advertising expenditures and claiming to have made cigarettes with "low tar." That tar means poison was never mentioned in cigarette advertising, but tobacco advertisers by virtue of their unchecked advertising influence were able, in effect, to resume a health education role by promoting "lower poison" brands to meet consumer demand.

In 1967 a recent law school graduate named John Banzhaf became upset that cigarette advertising continued to appear on television as if the findings of the surgeon general's report was yesterday's news. He petitioned the Federal Communications Commission (FCC) for a fair opportunity for the other side of smoking to be told. The FCC agreed with Banzhaf, a decision that led the American Cancer Society, American Heart Association and other organizations to produce commercials to counteract smoking. These counter-advertisements, such as one featuring actor William Talman (the district attorney on Perry Mason who was dying from lung cancer at the time he made the commercial) were so successful in decelerating the rise in cigarette sales among young people—even though they were shown a small fraction of the number of times cigarette advertisements were aired—proved so successful in holding down the rise in smoking among young people that the tobacco companies asked Congress in exchange for an anti-trust exemption to remove their own advertisements from television and radio.

But when Congress acceded to this request and approved the dropping of cigarette advertisements from the airwaves, counter-advertising also dropped out of sight because the fairness doctrine no longer applied. Thus the cigarette companies succeeded in halting the first successful mass media positive health strategy in this country. Today, advertisements that discourage smoking seldom appear on television because they are regarded as just another public service category.

Once off the air, cigarette companies became the top advertisers in most major magazines and stepped up their sponsorships of entertainment and sporting events. This method got cigarettes back on television with some decided advantages over conventional advertising. It was less expensive, for one thing, since the companies were able to attach a cigarette brand name onto a sports event, and it was more effective by virtue of the many mentions of the brand name and camera shots of advertising billboards in the background. Most important, with counter-advertisements effectively out of sight, the sales of cigarettes resumed an upward course. In 1977 DOC was founded with the idea to bring back and expand upon the very positive health values successfully promoted in the 1967–1969 counter-advertising campaign.

Unable to purchase billboard space in the city of Miami, FL, because of the billboard companies' refusal to permit us to compete side-by-side with cigarette advertisers or to "interfere in people's personal lifestyles," DOC found a bus bench company that was delighted to sell us space for our messages. Opposite a huge downtown billboard that said, "Come to Marlboro Country," we put up a bench that said, "Country Fresh Arsenic." When one brand called Decade advertised itself as "the taste that took 10 years to make," DOC responded with "Emphysema—the disease that took a decade to make." A billboard advertising the cigarette brand Arctic Lights contrasted with our nearby bus bench that read, "Arctic Lungs—guaranteed to make you cool as a corpse." DOC also began to create various counter-events to call attention to tobacco-sponsored promotions. The Benson and Heart Attack Film Festival, The Smoking is Un-Cool Jazz Festival, the Barfboro Country Music Show, and the Emphysema Slims Tennis Tournament are all actual events created by DOC chapters across the country. Most of these events have been created on a local level, but the first national Emphysema Slims Tennis Tournament and tennis clinic for kids attracted three Olympic gold medal winners, numerous entertainment figures, and tennis stars. All used the occasion to point to the absurdity of professional sports sponsorship by tobacco companies. The mayor of Santa Fe, New Mexico, proclaimed "Throw Tobacco Out of Sports Day" in his city in honor of the tournament.

DOC has also ventured into sports sponsorship on a larger scale. When DOC learned in 1988 that the United States Boomerang Team was about to depart for a major international competition and was sponsored by a cigarette company, DOC offered itself as a substitute sponsor. Wearing the pro-health international no-smoking logo on their uniforms, the DOC-sponsored team went to Australia, where they won the World Boomerang Championships. Other DOC sponsorships have included a pow wow in South Dakota, a racing sailboat in Texas, a fencing competition in New York, and a monster truck in Washington. It is DOC's hope to inspire other health organizations to counteract the influence of tobacco promotions by sponsoring local and national sports teams with a "Just Say No to Marlboro and Camel" theme. (Camel and Marlboro are the top-selling brands among American teenagers.) For the past decade DOC has sponsored continuous counter-advertising contests for young people, aimed at undermining the brand name imagery that has been so successfully employed by tobacco companies. At countless school assemblies, classroom lectures, and SuperHealth conferences, DOC members have developed counter-advertising strategies to support DOC's motto of "laughing the pushers out of town." On numerous occasions, DOC has purchased advertising space in the mass media to display winning entries and to call attention to tobacco-sponsored sporting events or cultural activities. A DOC rap video rapping specific cigarette brands targeted to minority groups was recently produced by medical students in the New York City chapter for both classroom and television use. Along with California artist Doug Minkler, DOC has launched an effort of doctors and artists combining talents in schools and in the mass media.

Since most, if not all, new tobacco users come from the 8- to 18-year-old age group, who could doubt that the tobacco industry has not carefully researched this market? Peer pressure can be bought, signed, sealed, and delivered on Madison Avenue, as any toy maker, candy company, or rock music star will corroborate. Of the ten most heavily promoted products in America, five are cigarette brands—the ones smoked most by teenagers.

Despite an advertising blitzkrieg second to none, the tobacco and advertising industries would have the public believe that adolescents have heard the facts about "both sides" and now have a "free choice" to decide whether or not to smoke "when they grow up." In claiming that it does not approve of young people smoking, the tobacco industry offers "peer pressure, parental smoking, and a climate of general rebelliousness among teenagers" as the reasons for adolescents taking up this neglected cornerstone of drug abuse. Meanwhile, the tobacco industry runs a year-round campaign with virtually no planned exposure for opposing messages ($3 billion annually vs less than $4 million in government public service announcements, pamphlets, and posters) in newspapers, magazines, supermarkets, and television. Every child grows up seeing thousands of larger-than-life billboards for cigarettes and countless sports-associated tobacco promotions. The formula for these promotions is both simple and insidious, invariably involving a community's newspaper and its top youth-oriented radio station as co-sponsors.

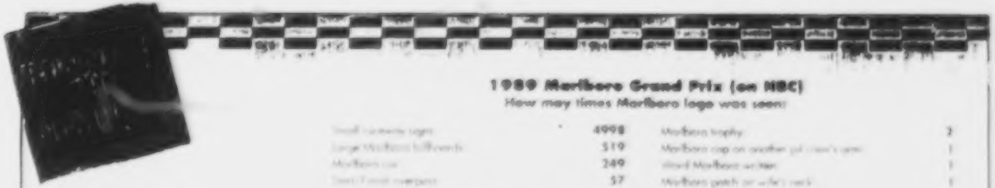
Support for visible counter-advertising of the kind pioneered by DOC is urgently needed to offset the long years of ubiquitous, unchallenged cigarette advertisements. Classroom-based education with emphasis on the physical effects of smoking is only one, limited way to tackle the adolescent smoking pandemic. Cigarette advertising and promotion can keep up with the latest fads in its portrayal of smoking and so remain "in" far better than even the most talented and motivated teachers and parents. Counter-advertising helps to educate young people not only about the preventable factors responsible for bad health and high medical costs but also about the insidiousness of the outright promotion of those factors.

The cost figures cited in this bill are much needed if we are to immunize the next generation against the willful deceptiveness of cigarette advertising. In addition to the precedent for successful counter-advertising between 1967 and 1970, there are also precedents for government expenditures on public interest advertising, such as current military recruitment promotions during televised sporting events and various efforts a decade ago to conserve energy and to lessen dependence on foreign oil supplies. In the case of smoking, purchase of advertising space is especially essential. Unlike the heavily publicized Media-Advertising Partnership for a Drug-Free America, which has received hundreds of millions of dollars in donated space in the printed media and free air time on television and radio, media corporations are too covetous of tobacco industry advertising revenue to run free advertising to discourage the sale of cigarettes and other tobacco products.

Perhaps it is time for a private Citizens Partnership for a Tobacco-Free Media. In the meantime, I hope the advertising and media industries will break ranks with the tobacco companies and support this bill. This would not only be to their best financial interests by virtue of the receipt of advertising revenues but also would be consistent with the position of leaders in the media who oppose banning tobacco advertising altogether.

The power of advertising to shape purchasing decisions, stimulate sales, and promote brand loyalty is well-documented. It has certainly created a huge following for cigarettes. It stands to reason that the same mix of marketing creative and strategic planning skills could generate persuasive and compelling anti-smoking advertising.

What is needed, then, is to counter the strong, engaging, omnipresent images of cigarette advertising—to laugh at the Marlboro man. We cannot do this with public service spots at 3 a.m. or earnest lectures in health ed class. Rather, we need to create an appeal for not buying cigarettes—and do it through sophisticated, ubiquitous, good-humored imagery. What we need is, in brief, paid advertising space financed in part by existing tobacco excise taxes and in part from revenues that would be derived from ending tobacco promoters' deductibility of cigarette advertising as a business expense.



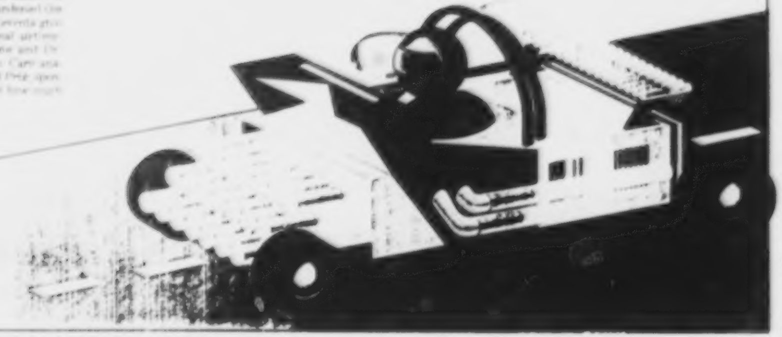
1989 Marlboro Grand Prix (on NBC)

How may times Marlboro logo was seen:

Small marlboro signs	4998	Marlboro trophy	2
Large Marlboro billboards	519	Marlboro cap on another pit crew's arm	1
Marlboro car	249	Word Marlboro written	1
Start/Finish overpass	57	Marlboro patch on wife's neck	1
Crew men in Marlboro jumpsuits	31	Marlboro shirt	1
TV logo with Marlboro logo	18	Marlboro backdrop for awards presentation	1
Marlboro helmet	11		
Driver in jumpsuit	10	Number of verbal references to Marlboro	11
Marlboro jackets	7		
Marlboro cap	4		
Marlboro signs on large Diamond vision screen	4	Total time of broadcast	93.62 minutes
Wife of Marlboro driver in Marlboro jumpsuit	4	Total Marlboro time	46.17 minutes
Umbrella	3	Total percentage of Marlboro seen on screen	49.32%

The Smoking Speedway

Since the ban on cigarette advertising on TV went into effect in 1971, tobacco companies have sought alternatives to advertise their product. For instance, cigarette advertising in newspapers and magazines jumped from $64.2 million in 1970 to $157.6 million in 1971. But just because cigarette makers are forbidden to buy ads on TV—ads on which they spent $205 million in 1970—it doesn't mean they've abandoned the medium. Sponsorships of sporting events give cigarette companies ample national airtime. Medical advocate Chris LaVergne and Dr. Alan Blum of Doctors Ought To Care analyzed NBC's 1989 *Marlboro Grand Prix*, sponsored by Philip Morris, to see just how much airtime Marlboro was getting.



Alan Blum, M.D. - Tobacco and Sports

THE DOC TV TOBACCO-SPORTS SCOREBOARD

- Auto Racing (eg Camel, Winston, Marlboro, Skoal, Kodiac, Levi Garrett, Copenhagen, Rothmans, Silk Cut, Gitanes, West, HB)
- Motocross (e.g., Camel, Marlboro, Chesterfield, Lucky Strike, Rothmans, Gauloises)
- Speedboat Racing (Lucky Strike)
- Skiing (Marlboro, Newport, Camel)
- Golf (Vantage, Premier)
- Tennis (Virginia Slims, Marlboro)
- Sailing: ProSail Hobie Cat (Salem)
- Sailing: America's Cup (Marlboro)
- Soccer (Marlboro, Camel)
- Bowling (Lucky Strike)
- Thoroughbred Racing (Marlboro)
- Fishing (Skoal, Red Man)
- Tractor Pull (Red Man Chew, Renegades)
- Badminton (Winston)
- Australian Football--on US TV (Winfield, Super Milds)
- Backgammon (Philip Morris)
- Baseball--22 of 24 major League stadiums have either Marlboro or Winston billboards
- Similar percentages apply for football, basketball, and hockey arenas.

This list does not include extensive reinforcing sports promotions by non-tobacco subsidiaries of tobacco companies (e.g., Miller Lite Player of the Game on televised baseball).

Partial key to companies and brands:

Philip Morris: Marlboro, Virginia Slims
RJR Nabisco: Camel, Salem, Vantage, Winston
American Brands: Lucky Strike
Loews: Newport
UST (United States Tobacco: Skoal, Copenhagen)

Commentary

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Strategies to Reduce Cigarette Sales

Excise Taxes and Beyond

CIGARETTES are among the highest taxed consumer products. In the United States, one third of receipts from civilian retail cigarette sales goes to federal, state, and local treasuries in the form of excise or sales tax, and in fiscal year 1984, the federal government's share of $10.1 billion in tax revenue was greater than $4.7 billion.[1] Yet in view of the enormous cost of smoking-induced illness (estimated by health economists to be between $39 and $55 billion per year, or a minimum of 10% of the national outlay for health care[2]), it is hard to believe that cigarette taxes are not specifically earmarked for health care, much less to discourage smoking. Indeed, if the recent year-long debate in Congress over whether to retain the 16-cent federal tax is any indication, then there is little doubt that the government sees cigarette taxes solely as a means for deficit reduction. And, so much of the debate on cigarette taxes has focused on passing the increases on to the user that little attention has been directed toward better ways to tax the profits of manufacturers, wholesalers, and retailers of cigarettes and other tobacco products. (Technically, the excise tax is paid by the wholesaler but is passed on to the consumer.) The situation is akin to trying to end an epidemic of malaria by fluffing up the pillow of each patient rather than by attacking the mosquitoes or draining the swamps. With the cigarette pandemic, the vector remains untouched.

See also p 1028.

According to Matthew L. Myers, attorney for the Coalition on Smoking OR Health, governments have underutilized excise taxes as a deterrent to smoking: "We are a long way from where taxes would cause both a decline in consumption and significantly affect profits. That would be at least a dollar a pack" (oral communication, November 1985). Myers also points out how the tobacco companies appear to have concertedly cushioned the impact of the 8-cent tax increase in 1982 by raising prices far in excess of any anticipated decrease in consumption.[3] For several months before the tax went into effect there were eight different price increases totaling approximately 25% of the total cost of a pack. Not only did the companies stay ahead of the game, but they also did not dispel the notion among consumers that the price increases were due solely to the tax—and thus succeeded in portraying the government as the instigator.

There is little mystery why this ironic and tragic situation persists. Just as the tobacco industry has been able to ride out what it calls the "health scares" by introducing filtered and "low-tar" brands, so has it been adept at using advertising to subvert any disincentive for buying cigarettes, following the imposition of an excise tax.[4] Among the strategies employed by cigarette advertisers during the past year to respond to the threat of higher state taxes or of the retention of the 16-cent federal tax are the following:

- The introduction by every cigarette company of various reduced-priced brands, longer-length brands, and 25-pack brands (often for the price of 20, with the manufacturer absorbing the tax difference), and a shift in advertising budgets to emphasize what the industry calls these "value-oriented" brands, with wealthy-sounding names like "True Gold" and "Richland."
- An increase in rebate coupons in wide-selling magazines and hundreds of daily newspapers, good for between 20% and 40% discounts on cartons of cigarettes. (Cartons are being promoted more extensively than packs in some brands.)
- An increase in point-of-purchase displays in cooperation with national chains of convenience stores, supermarkets, pharmacies, and gasoline stations; these retail establishments have begun advertising cigarettes on the food pages of daily newspapers.
- An increase in the distribution of free sample packages of cigarettes on city streets and at state fairs, civic functions, and cultural events.
- An increase in tobacco company sponsorship of televised sporting and cultural activities, and an increase in the placement of cigarette brand names on lingerie, a line of clothing, travel clubs, and a host of other "luxury" promotions.

Although the tobacco industry claims that the sole purpose of cigarette advertising is to encourage brand

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From DOC (Doctors Ought to Care).
Reprint requests to 118 Webster Ave, Manhasset, NY 11030 (Dr Blum).

switching, the head of at least one major tobacco company has admitted that his company's recent strategy includes a "preemptive strike" to lower prices, in effect to attempt to prevent people from stopping smoking. Edward A. Horrigan, Jr, president of R. J. Reynolds, said his company has specifically wooed the "price-sensitive" smoker: "Some smokers always make decisions based on price alone," he told *Business Week*. "We'd rather keep them in the smoker community than lose them" (June 4, 1984, pp 92-98). Experience in other countries such as Australia, Ireland, and Canada reveals a pattern of tobacco industry tactics designed to overcome all disincentives to buy cigarettes as the result of tax increases (*Wall Street Journal*, Nov 5, 1985, p 14).[4] (It is interesting that in spite of the great difference in price between American and Canadian cigarettes, overall per capita consumption is the same in both countries.[5])

In this issue of THE JOURNAL, Warner[6] applies age-specific price-elasticity estimates of health economists Lewit and Coate[7] to various excise tax scenarios and presents a cogent argument: an 8 cents per pack cigarette excise tax increase (much less the 32 cents per pack tax now sought by most health groups) will prevent hundreds of thousands of teenagers from taking up smoking and will provide the final trigger for many to drop the habit.

Several questions remain, however. The tax does not appear to have substantially curtailed smoking among young women, attesting to the effectiveness of the enormous increase in advertising of so-called women's brands; milder to inhale, these brands may also facilitate habituation.[9] Also, if the tax increase were the sole factor behind the decline in smoking, then one would expect to find teenagers to be the main purchasers of the newly introduced discount brands. But adolescents prefer image over price and invariably choose name over generic brands. Moreover, the slight decline in cigarette sales among teens may well have been offset by the dramatic and alarming rise in the popularity of heavily promoted smokeless tobacco, as well as a trend toward lower-taxed roll-your-own cigarettes and clove cigarettes. Since there are no warnings on these products, the continued promotion of smokeless tobacco, including free samples, may foster the myth that it is for the most part safer than smoking. In just a decade of television advertising, sales have increased tenfold.

There are other factors that must be considered before one can be certain that the teenagers most affected by the tax increase will remain in the nonsmoking population. For instance, exposure to smoking as a social norm increases upon entry into the military or blue-collar work force. There may be an added factor of pent-up demand, whereby the onset of smoking is postponed by the tax at age 16 years, only to take hold even more strongly at 18 years as the long-awaited and newly affordable entry into fast-living adulthood occurs. The adulthood theme is used by the tobacco industry itself in advertisements in teenage magazines (and also in a booklet produced by the public relations arm of the tobacco industry for the National Association of State Boards of Education[10]) urging young people to delay the decision whether to smoke until they are older. By portraying smoking as an adult custom, as opposed to a dangerous, costly, and silly-looking one, the tobacco industry can be said to have hit upon an ideal reverse psychology. The most effective way to get children to smoke is to say, "You're too young to smoke."

In the long term, the net effect of a 16-cent (or even 32-cent) excise tax may be small in comparison with that which could be accomplished through a multifaceted effort. Creative approaches aimed at diminishing the *availability* of cigarettes to adolescents and undermining the image-based advertising campaigns for the brands that most teenagers buy[11] will significantly reduce smoking. In addition, positive incentives must be developed, such as preferences in job hiring, especially in the health field, for those who do not smoke.

If the next generation is to be protected from cigarette-caused diseases that have become leading killers, then all forms of tobacco promotion must be stopped now. But even if this ideal, now espoused by the American Medical Association and other health organizations, were to come about overnight, it would not remove the need for paid counteradvertising to offset the long years of ubiquitous cigarette messages. In its only meaningful national test between 1967 and 1970 when anticigarette commercials were shown approximately 1,200 times a year on television, counteradvertising had a disproportionately greater effect in reducing smoking than the more frequently shown cigarette advertisements had in increasing cigarette sales.[12,13] In the absence of counteradvertising, the tobacco industry continues to run a year-round political-style campaign of an incumbent, with virtually no planned exposure by the opposition.[14]

For such health promotion efforts to succeed by the year 2000, it will be essential to focus on the cigarette industry rather than on just the behavior of the individual cigarette smoker.[15] A major challenge confronting physicians will be to convince legislators to pass far more stringent antismoking measures, including the earmarking of tobacco excise taxes for health promotion.

Alan Blum, MD

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Commentary

Medicine vs Madison Avenue

Fighting Smoke With Smoke

ALL PHYSICIANS—and increasing numbers of the general public—recognize the link between cigarette smoking and emphysema, squamous cell carcinoma of the lung, chronic bronchitis, cardiovascular problems, low birth weight, and other disabilities. However, few people realize that the tobacco industry has always tried to associate cigarette smoking with good health. And those who look on cigarette smoking as an inalienable right find it hard to believe that it is not even a time-honored tradition.

Even well into the 1920s, cigarette smoking still had little appeal—and definitely not to women—but through advertising, the tobacco companies thought they would be among the very first to give women one version of equal rights: "To keep a slender figure, no one can deny . . . Reach for a Lucky instead of a sweet." A well-promoted aura of romance and sophistication made smoking Camels synonymous with being "a social success," and dozens of movie stars were used as models in the advertisements.

But we have also been asked to consider our health as well as our looks. Children learned from reading the Sunday funnies that smoking Camels could give them "healthy nerves," "a flow of energy," "relief from fatigue," and "better digestion." Baseball stars like Lou Gehrig and Joe DiMaggio endorsed Camels ("Athletes smoke as many as they please"), and even Santa Claus found Lucky Strikes "easy on my throat." During World War II, advertising made a carton of cigarettes the ideal gift for the boys overseas, a fact any physician working in a Veterans Administration hospital during the past 30 years could confirm.

And how did the tobacco industry respond to the reports of the 1940s and 1950s that associated cigarette smoking with a variety of chronic and lethal ailments? It stepped up its promotion, and on the back of most issues of *TIME* or *LIFE*, R. J. Reynolds could proclaim: "MORE DOCTORS SMOKE CAMELS THAN ANY OTHER CIGARETTE." Even in *JAMA*, until well into the 1950s, the hucksters would dare to say, "If pleasure's your aim, not medical claims, light an Old Gold!" and "Why many leading nose and throat specialists suggest . . . 'Change to Philip Morris.'" Physicians were taught their ABCs—"Always Buy Chesterfields." The P. Lorillard Co incurred the wrath of the American Medical Association by implying that Kent had been proven to provide "health protection." Commercial messages appeared not just in print but on almost all major radio and television programs, including prime-time news broadcasts. The purpose of such advertising was not just to sell cigarettes but also to promote the social acceptability of smoking.

Plus ça change . . .

Sadly, the situation is unchanged. The tobacco industry continues to run a year-round, essentially unopposed campaign ($800 million annually vs less than $1 million in government public service announcements and pamphlets) in newspapers, magazines, supermarkets, and pharmacies. Almost half of all billboard advertising is for cigarettes, and every child grows up seeing thousands of these larger-than-life commercials—with the Surgeon General's warning neatly camouflaged.

Although publishers reject some advertising such as X-rated movies, they employ the First Amendment to explain that any attempt on their part to tone down the health or sex appeal in cigarette advertisements would be censorship. Those who call for greater scrutiny are portrayed as seeking prohibition. Today, let physicians suggest a connection between cigarette smoking and high health costs or fire loss or decreased worker productivity, and they are branded as "anti-smokers." Yet the tobacco advertisers somehow escape the sobriquet "anti-health."

In claiming that it does not approve of young people smoking, the tobacco industry offers "peer pressure, parental smoking, and a climate of general rebelliousness among teenagers" as the reasons for adolescents taking up the nation's number one form of drug abuse. Unlike the alcohol distillers, the cigarette manufacturers have never taken out a single advertisement to discourage young people from using their product. To the contrary, they have increased their youth-oriented music and sports promotions. Cash incentives to smoke cigarettes—in the form of discount coupons in the Sunday magazine, sports, and food sections of newspapers, not to mention the free samples handed out by attractive young ladies on street corners—have increased 1,000% in the last five years.

Since most, if not all, new customers come from the 8- to 21-year-old age group, who could doubt that the tobacco industry has not carefully researched this market? Peer pressure can be bought, as any rock music impresario, toy maker, or market research expert will corroborate. Of the ten most heavily promoted products in America, five are

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From the Division of Scientific Publications, American Medical Association, Chicago.

Reprint requests to Division of Scientific Publications, American Medical Association, 535 N Dearborn, Chicago, IL 60610 (Dr Blum).

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cigarette brands—the ones smoked most by teenagers.

Despite an advertising blitzkrieg second to none and few financial and social disincentives for an adolescent to take up smoking, the tobacco industry would have the public believe that adolescents have heard "the facts" about "both sides" and now have a "free choice" to decide whether or not to smoke "when they grow up."

The Physician's Role

It seems that the individual physician, confronting such a propaganda barrage, would be powerless to combat the epidemic of cigarette smoking. But there is much a physician can do to become a better teacher and "prevention specialist," in lieu of relegating the health education role to ancillary personnel, a smoking cessation clinic, or a pamphlet off the shelf. The physician can develop an innovative strategy beginning right in the office or clinic waiting area. What positive health incentives now greet the patient? Ashtrays? Magazines with dozens of cigarette advertisements? A commitment on the part of American physicians not to let their offices be vehicles for selling cigarettes would make a substantial contribution to health promotion.

The physician can learn to personalize approaches to patient education by carefully scrutinizing every pamphlet and audiovisual aid in the office. It is essential that he be as critical of patient education materials—be they slick booklets distributed by pharmaceutical companies, brochures from medical associations, government pamphlets, or posters from the voluntary health agencies like the American Lung Association—as of any medical device, drug, or expensive piece of office equipment.

Should the physician be using the same cigarette counseling method with a high school girl, a strapping blue collar worker, and an executive already showing symptoms of heart disease? In the first instance, should the physician be talking about such abstract concepts as lung cancer or emphysema? Might it not be better to emphasize the physical unattractiveness of stained teeth, bad breath, the loss of athletic ability, and the financial drain that can result from buying cigarettes? Might we suggest to the blue collar worker the likelihood of fewer days lost from work, greater athletic prowess, and even a lengthier sex life were he to "kick the cigs"? And might it not be better to point out to the concerned executive that a so-called low tar cigarette may in fact contain higher concentrations of chemical additives, carbon monoxide, and other gases and thus increase the risk of heart attack? In any case, such dialogue must be practiced over and over again and individualized to the patient; it should be designed so as to call attention not only to the inevitable risks of smoking cigarettes but also to the chemically adulterated tobacco product itself, its inflated price, and the way in which it is promoted.

As the AMA Council on Scientific Affairs report on smoking implies (p 779) in its call for more vigorous efforts on the part of the medical profession, physicians can extend their health promotion and prevention-oriented efforts beyond their offices, for they are in a position to have a considerable impact on their communities and, in turn, on society at large. Active participation in school health education programs—more often than not dull and scanty—is needed. Following the lead of Charles P. Tate, Jr, MD, of Miami, physicians can become more involved with local health initiatives such as clean indoor air acts for airports and other public gathering places. They might also join a coalition of physicians, medical students, and other health professionals called DOC (Doctors Ought to Care), which has launched a novel health promotion effort in several states aimed at curbing such lethal life-styles as cigarette smoking, alcohol dependence, other drug abuse, poor nutrition, and teenage pregnancy.

What's up, DOC?

One of the key components of DOC's SuperHealth 2000 approach, in addition to setting up speakers bureaus of local health professionals and involving teenagers themselves in the design of projects, has been a counteradvertising campaign directed at junior high school students, which employs paid radio and television commercials, posters, newspaper and bus bench advertisements, and T-shirts. DOC has found that humor can be an effective tool. In one of its poster series, DOC parodies the classic "I smoke for taste" advertisement with a picture of a similarly defiant, macho character with a cigarette dangling from one nostril and the caption, "I smoke for smell." One bus bench advertisement, which on first glance looks like it is selling cigarettes, proclaims: "10 YEAR SUPPLY ONLY $7,000."

Support for continued visible counteradvertising of this kind is urgently needed. The most dramatic decline in cigarette sales occurred between 1968 and 1970, the only period when cigarette advertising and counteradvertising (by the voluntary health agencies) coexisted on television. Moreover, the counteradvertisements were mostly shown in off-hours and in a very small ratio compared with the prime-time Marlboro men. In 1970, when televised cigarette advertising was "banned" by Congress—at the behest of the tobacco industry, alarmed at the success of counteradvertising among adolescents—the sales of cigarettes resumed an upward course.

Emphasis on the physical effects of cigarette smoking has not been shown to be the most appropriate way to tackle the adolescent cigarette epidemic. Cigarette advertising can keep up with the latest fads in its portrayal of smoking and so remain "with it" far better than the lugubriously developed and fleetingly tried run of "antismoking" programs.

An investment on the part of organized medicine is needed in the primary prevention realm and not just in smoking cessation "kits." A statement from "Childish Habit," an editorial in THE JOURNAL of Sept 14, 1964, is equally true today: "Reduction or elimination of cigarette smoking can be achieved only if today's nonsmokers never start." It is time medical science made it easier for itself by catching up to advertising science in communication skills.

Just as the 1960s were a time of political consciousness-raising, so the 1980s could become an age of enlightenment as physicians help to educate the public not only about the preventable factors responsible for bad health and high medical costs but also about the insidiousness of the outright promotion of those factors.

Alan Blum, MD
Morris Fishbein Fellow 1979-1980
American Medical Association
Chicago

Printed and Published in the United States of America

FOCUS

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Vol. 2 No. 2 Published in Miami, Florida Mar.-Apr., 1979

Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health

DOC — counter advertising has impact

Physicians group launches innovative prevention campaign

By ALAN BLUM

Adolescents are a tough bunch to talk with about cigarettes. Barraged by violent, sexually suggestive shoot-'em-ups and canned laughter comedy on television, they are often oblivious to their own identity. Willing to challenge any apparent authority figure — be it parent, teacher, or doctor — they are unknowing of the manipulative techniques of an industry which spends more than $1.5 million a day (more than the Office on Smoking and Health spends in a year) to inculcate them.

For the tobacco industry-advertising alliance to have dispensed billions of dollars in propaganda "aimed only at adults" and then to attribute the worsening epidemic of child and adolescent cigarette abuse to "peer pressure" does their trade too little credit or credibility.

The industry's opposition to any government-sponsored smoking education programs focused on young people, its refutation of evidence that smoking is particularly damaging in pregnant women, its contention — having never admitted that cigarettes are dangerous in the first place — that smoking can be made safer, and its attempt to cover up the crippling physical and financial toll taken by cigarette smoking has spawned a gradually rising interest in smoking prevention by one group widely thought to have the pivotal role in reversing adolescent cigarette abuse-namely, physicians.

In the vanguard is DOC — Doctors Ought to Care. The "ought" is not meant to imply that doctors don't care, but rather, as the group which sees first-hand the devastation caused by cigarette smoking and other killer addictions, they're the ones who **do** care very much. From its origins in mid-1977 with three family physicians, this non-profit, tax-exempt group headquartered in Miami has grown to more than 500 health professionals across the country who are seriously interested in educating the public in a refreshing, offbeat manner about the major preventable causes of bad health and high medical costs.

DOC has been putting its money where its mouth is by spending its funds not on still more disease-oriented research but on prime advertising space in order to keep pictures of good health in constant view to counter the advertising for adverse health products. The technique is one of savvy and humorous parody — instead of "Come to Marlboro Country," DOC's bus bench advertisements say "Country Fresh Arsenic." Rather than "Decade — the taste that took ten years to make," DOC says "Emphysema — the disease that takes only a Decade to make." After taking a close look at the guy in the open shirt who boasts "I smoke for taste," DOC posed a model with a cigarette in his nose and the caption, "I smoke for smell." The female models for DOC's commercials ("You've coughed up long enough, baby!") make Cheryl Teigs look like Tugboat Annie. One 14 year old junior high school student came up with an answer for Tareyton's "I'd rather light than fight": "I'd rather live than light," he said.

DOC has been engaging such teenagers in a lively dialogue by asking whether cigarettes just may be a rip-off-not only physically, but cosmetically, financially, and psychologically as well. DOC's interest lies not in prohibiting cigarette smoking, but rather in discouraging a new generation from taking it up. The physician's personal involvement — heretofore mainly focused not on prevention but on the frustrating, ex-post facto exercise of urging patients to quit smoking — is essential to this aim.

The South Carolina Family Practice Residents Association has launched the second major chapter

Dr. Alan Blum, founder of DOC is creating waves.

of DOC. Its linchpin is a speaker's bureau which extends statewide to high schools, civic groups, and radio and TV programs. It has also developed radio commercials on such topics as nutrition, venereal disease, pregnancy, and alcoholism which are now running on several stations.

Other states gearing up for a DOC-directed effort include Colorado, Georgia, Iowa, Indiana, Ohio, Illinois, California, and New York.

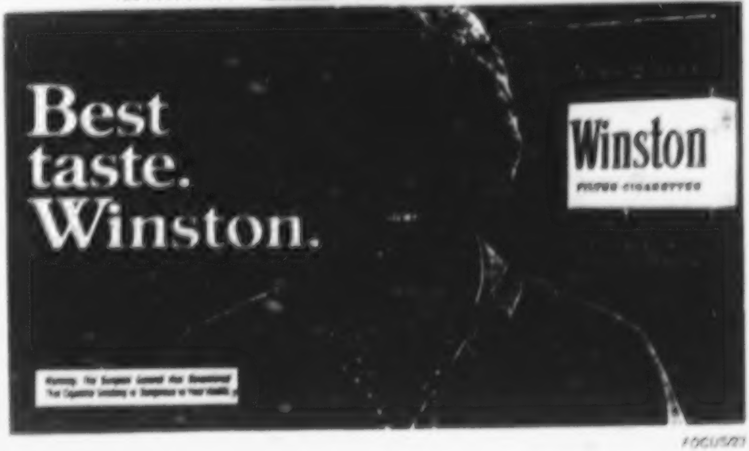
DOC has been endorsed by a great many health organizations including the American Medical Association Resident Physicians Section, the Florida Academy of Family Physicians, the Dade County (Florida) Medical Association, and the National Conference of Family Practice Residents.

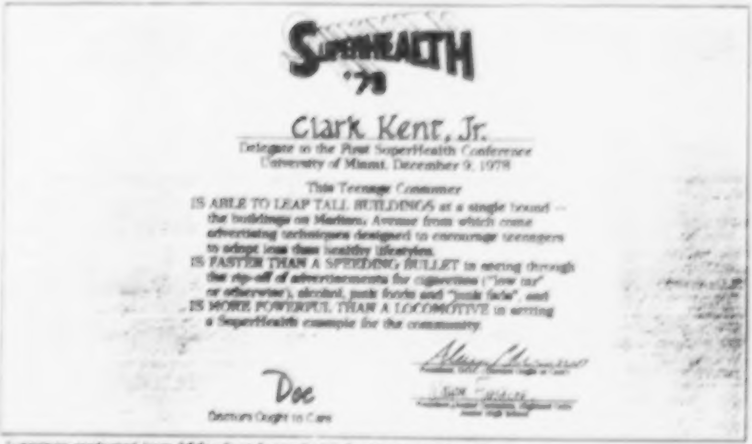
Just how is DOC so different in its approach to teenagers? Most of the all-too-few school health programs — especially those which include cigarette smoking education — have emphasized eventual disabilities, fear of disease, and the notion that cigarette smoking is self-destructive behavior. But to any adolescent who feels fine, illness is an abstract thing, and it is difficult to imagine its isolating consequences.

Hidden away in all the cigarette ads and laughed at by teenagers is the health joke of the century.

(Continued on page 28)

Two views of taste


Best taste. Winston.
Winston
FILTER CIGARETTES
Warning: The Surgeon General Has Determined That Cigarette Smoking is Dangerous to Your Health.



SUPERHEALTH '79

Clark Kent, Jr.

Delegate to the First SuperHealth Conference
University of Miami, December 9, 1978

This Teenage Consumer
IS ABLE TO LEAP TALL BUILDINGS at a single bound — the buildings on Madison Avenue from which come advertising techniques designed to encourage teenagers to adopt less than healthy lifestyles.
IS FASTER THAN A SPEEDING BULLET in seeing through the rip-off of advertisements for cigarettes ("low tar" or otherwise), alcohol, junk foods and "junk fads", and
IS MORE POWERFUL THAN A LOCOMOTIVE in setting a SuperHealth example for the community.

Doc
Doctors Ought to Care

Superman graduated from DOC's First Super Health Conference held in Miami

DOC hits hard with counter-advertising

(Continued from page 23)

"Warning: The Surgeon General has determined that cigarette smoking is dangerous to your health."

Other "anti-smoking" projects concentrate on the teenager's not being one of the crowd and on resisting peer pressure. One program in Houston which claims success does emphasize immediate health dangers and involves an analysis of manipulative techniques used by advertisers. But as Dr. Daniel Horn, long a national leader in smoking education has pointed out in regard to school — based programs:

"There are serious difficulties in attempting to influence young people by teaching them in the classroom to adopt behavior opposed to practices that are encouraged in the larger environment."

All who have studied the problem of adolescent cigarette abuse agree that its cause is multifactorial. However, the one factor which can be most thoroughly monitored (and, in theory if not in fact, directly counteracted on its own terms) is advertising.

DOC does not believe that an emphasis on the physical effects of smoking is the most appropriate way to tackle the adolescent cigarette epidemic. Rather, we contend that adolescent preferences (as in music, magazines, and fashion crazes) in our community and elsewhere coincide with the motivating techniques used in cigarette advertisements.

In other words, cigarette advertising can keep up with the latest fads in its depiction of smoking and so remain "with it" far more easily than the lugubriously developed and fleetingly tried run of "anti-smoking" programs.

Since advertising is an influence which can be studied more precisely than any other factor — in that its constantly changing campaigns can be photographed and otherwise permanently recorded — it should be more widely accepted that "peer pressure" is something which can be directly purchased by advertisers. Marketing surveys prove it all the time.

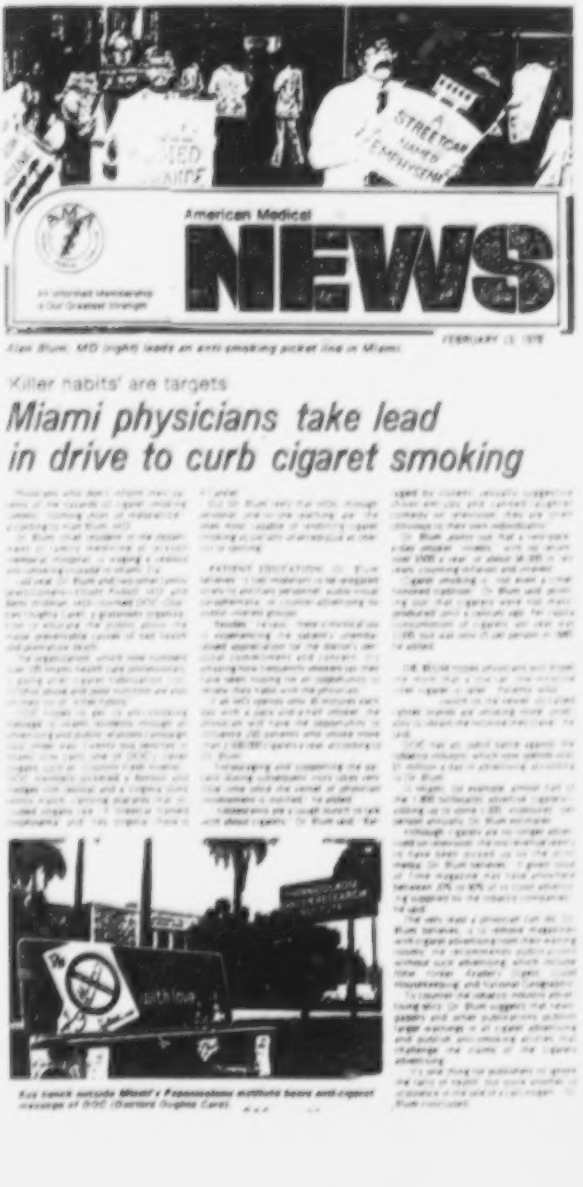
The tobacco industry, which claims it doesn't approve of young people smoking, offers "peer pressure, parental smoking, and a general climate of rebelliousness among teenagers" as the reason for adolescent cigarette abuse. In debates, spokespersons for The Tobacco Institute (which visits schools!) refuse even to acknowledge a correlation between advertising and cigarette sales.

The Tobacco people conveniently ignore the fact that when pressure was exerted on the industry to stop their promotions on college campuses and in collegiate newspapers, cigarette sales plummeted. Similarly, when advertising for even the most popular brands ceased, sales fell rapidly. And Marlboro, which has been around for more than half a century, only attained its number one ranking after a change of advertising agencies — and image, from "Mild as May" to a rugged man's smoke — and the biggest ad push of any cigarette.

In light of evidence that adolescents were favorably influenced by television counter-advertising (during the only time — 1967-70 — when such an effort was seriously tried), even those which were shown in a small ratio compared to the cigarette commercials, it seems essential to engage young people themselves in the design of a total ad campaign for a product — "SuperHealth" (formerly "anti-smoking") — the features of which are good looks, sexiness, health-makes-wealth, fame, and humor. DOC is slowly but surely achieving that aim on a community-wide — and, eventually, national level.

Meanwhile, as more and more children smoke, the cigarette pushers continue to smirk.

[illegible] FOCUS



American Medical
NEWS

An Informed Membership
is Our Greatest Strength

FEBRUARY 13, 1978

Alan Blum, MD (right) leads an anti-smoking picket line in Miami.

A STREETCAR NAMED EMPHYSEMA

'Killer habits' are targets

Miami physicians take lead in drive to curb cigaret smoking

Bus bench outside Miami's Papanicolaou institute bears anti-cigaret message of DOC (Doctors Ought to Care).

with love

Doctors woo sports team from tobacco firm

By Howard Wolinsky

In a medical first in this country, a doctors group has wrested sponsorship of a sports team away from a tobacco company.

The U.S. Boomerang Association's team, which includes the world's No. 1 and No. 2 boomerangers, will be going to the World Cup competition next month in Australia under the flag of Doctors Ought to Care, a health promotion group with more than 6,000 members.

Philip Morris, which sponsors the Virginia Slims tennis tournaments, Marlboro Grand Prix auto race and many other sporting events, was going to pay for the boomerang team's trip until team members were stricken by guilt, Chet Snouffer, captain of the three-man team, told the Chicago Sun-Times last week.

Dr. Alan Blum, DOC chairman and a faculty member in family medicine at Baylor University in Houston, said, "This is a breakthrough in separating sports from tobacco companies. We hope other medical groups will follow our example."

Chet Snouffer

But Steven Weiss, manager of media relations for Philip Morris, said, "As usual, the DOC group is making [illegible] situation and trying to create something out of nothing."

Snouffer, 31, who is the top-rated boomerang thrower, said the team desperately needed $12,000 to attend the World Cup competition in [illegible], Australia, starting May [illegible].

During competitions, boomerang throwers are ranked in eight events, including accuracy and how long they keep the boomerang aloft.

Snouffer, of Delaware, Ohio, said contact with Philip Morris was made when another team member, Barnaby Ruhe, a New York artist, had an agent try to obtain sponsorship.

"They promised us all kinds of publicity," Snouffer said. "If we'd wear big Philip Morris logos on our chests, they told us we'd be on [ABC-TV's] 'Good Morning America' and so on."

The issue caused "a rift" in the team, Snouffer said. He said his position was supported by Eric Darnell, of South Strafford, Vt., the No. 2 boomeranger, an asthmatic "who falls over dead when he gets near smokers." The third team member, Ruhe, a reformed smoker, favored taking the money to help get attention for a sport that is little known in this country, said Snouffer.

Meanwhile, Blum heard of the team's dilemma.

He noted that anti-tobacco groups long have been burned up over their 'free' sponsorship of sporting events. "It was time to put our money where our mouth is," he said. "Tobacco companies have put enough logos on the bodies."

Blum, whose group has run its own "Emphysema Slims" tournaments over the last four years, offered to raise the money for the U.S. boomerang team. Thus far, he has lined up $5,000. He hopes to obtain more from anti-smoking groups and individuals. Donations can be sent to DOC, P.O. Box 20304, Houston, TX 77225.

Weiss said Philip Morris was disappointed because the company felt a tie-in with the boomerang team was a natural alternative sponsorship last year of Dennis Conner, who recaptured the America's Cup title in yachting from Australia. But he said it was clear, especially after Darnell's physical sensitivity to cigarette smoke came up, that it was in the interest of both sides to end negotiations.

He stressed, however, that Philip Morris does not require any athletes that it sponsors to smoke or defend smoking.

There was precedent for doctors sponsoring a sports team. In 1983, an Australian eye specialist personally underwrote a cricket team that had been pursued by a tobacco company. The doctor-sponsored team wore anti-smoking logos on its uniforms.

Blum, the new patron of a sports team, said his next step is working up a logo for the boomerangers. "Maybe we'll have a boomerang slicing through a Marlboro pack," he said.

[illegible]

Scott Ostler

Bully for Doctors Who Believed *They* Could Back a Team

[illegible]

Some of the biggest names in entertainment and sports participated in Santa Fe's first Emphysema Slims Pro Celebrity Tennis Tournament.

Counter-Promotion-Tennis Elbows Tobacco Company Sponsorship of Sports

In the city where Virginia Slims cigarettes originated, a coalition of physicians, health care workers, business owners, politicians, athletes and celebrities aced tobacco sponsorship of sports with the inaugural Emphysema Slims Celebrity Pro Tennis Tournament of Santa Fe on July 22.

Chris Fletcher, MD, New Mexico DOC president, stated "Our community really came together to show just how ridiculous the whole concept of tobacco sponsorship of sports really is."

With major funding provided by St. Vincent Hospital, Santa Fe County Medical Society, Smoke Free Santa Fe and National DOC, and with an enormous cadre of volunteers led by Adrienne and Victor Carter and Tim Garcia, Emphysema Slims of Santa Fe set new standards for counter promotions.

Celebrities for the event included Gregory Harrison (Gonzo of Trapper John, MD), Mariska Hargitay (Falcon Crest), Anthony Crenna (Wings of Eagles) and Christopher Atkins (Blue Lagoon, Dallas); Cynthia Potter (Olympic Diver '68, '72, '76, '80, Bronze medal in 1976, and World Diver of the Year in 1977), Tom Jager (double gold medal winner 1984 and 1988 Olympics) and John Murphy (Gold and Bronze medal 1972 Olympics). The list of tennis participants was headed by Andrea Jaeger (former #2 player in the world and finalist at both the French Open and Wimbledon), Matt Mitchell (NCAA Singles Champion), Bill Maze (NCAA All American), and Tracy Delatte (two-time pro tour champion).

Joining them in the celebrity pro exhibition matches and in actual tournament play, as well as giving free tennis lessons for the children of Santa Fe, were over a dozen pros and players from around New Mexico. In addition to free tennis clinics for kids, numerous other activities highlighting DOC's pro-health theme were held at the Sangre de Cristo Racquet Club.

Kicking off the event, DOC member Art Hoffman provided free hot air balloon rides. The balloon carried the world's largest "no smoking" logo. Alan Blum, MD, Chairman of DOC, presented the W.A.R.M. Award (Worst Athlete Role Model), for the sixth straight year to Martina Nicesmokanova. Children from the Girls Club presented skits on tobacco advertising. Counter advertising poster contest winners were announced.

Perhaps most important was the declaration by Santa Fe Mayor Sam Pick of July 22, 1989, as official "Throw Tobacco Out of Sports Day" in Santa Fe.

Ms. Jaeger, a former Virginia Slims player, summed up the event: "The association of athletes and tobacco together isn't right. Every time you say, 'I'm going to be playing in the Virginia Slims,' you don't realize that it's free publicity for them.

"We've got to make the kids aware

Official Proclamation
of the City of
Santa Fe, New Mexico

WHEREAS, the 1989 Emphysema Slims Tennis Tournament will be held on Saturday, July 22, 1989 in Santa Fe at the Sangre de Cristo Racquet Club; and

WHEREAS, the city of Santa Fe is committed to clean air and a healthy environment for its citizens; and

WHEREAS, it is ludicrous and hypocritical to associate cigarette smoking with sports, glamour, good looks and health.

NOW, THEREFORE, I, SAM PICK, the mayor of Santa Fe proclaim Saturday, July 22, 1989, the first annual

"THROW TOBACCO
OUT OF SPORTS DAY"

and wish the Emphysema Slims Celebrity Tennis Tournament the best of luck in their efforts to educate young people against the hazards of smoking and to dissociate tobacco from sports.

that Magic Johnson doesn't go into the locker room at halftime and smoke a cigarette.

"You can have fun and go to social events and not be part of that scene of those who drink, smoke and take drugs. I think sometimes that's forgotten. Some of these kids don't even know what this clinic is all about, but five years from now when someone brings up something about the Virginia Slims tour, maybe they'll say, 'I remember being at the clinic for Emphysema Slims.'"

COUNTER PROMOTION EVENTS

Any activity sponsored by tobacco or alcohol companies lends itself to a counter promotion activity. But merely observing the advertising and promotional campaigns surrounding the event, one can easily plan a counter promotion to ridicule the sponsor and point out how ridiculous it is for the tobacco or alcohol product to be associated with the activity. For example, one could play up on the fact that a tennis player who smokes can't run as fast or serve the ball as well and it is unconscionable to allow a tobacco company to sponsor their sport. Or why are alcohol companies sponsoring auto racing when drunk driving is the main cause of traffic deaths in our nation? Counter promotions encourage the public to think and turn the tobacco or alcohol sponsored event into a showcase of how ridiculous the use of the product, as the company's actually is. They also force the sponsor to defend their position. Some of DOC's counter promotion events include the Emphysema Slims Tennis Tournament, Dead Man Chew Softball Tournament, [illegible] Golf Tournament, [illegible] Fashion Fair, the Smoke Free & COOL Jazz Festival, the Barfboro Country Music Show and the Benson and Heartattack Film Festival. The following guidelines may help in planning a successful counter promotion event.

1. CHOOSE THE EVENT TO BE SPOOFED CAREFULLY

Whether you choose a national event such as the Virginia Slims Tennis Tournament or a more localized counter promotion such as spoofing your local baseball team's sponsorship by Red Man Chew, be sure it is one with which your community is familiar. Choose an event which your group has the resources to parody or which you can scale down to fit your needs. For example, spoofing a tobacco-sponsored sailing series with a counter promotion sailboat race could be extremely expensive and involved, but having local school students sail their homemade paper boats in a large wading pool might be every bit as effective.

2. CREATE A COUNTER-PROMOTION THEME

Playing with the title of the original event, come up with a catchy, humorous counter promotion title, hopefully one that ridicules specific brand names and the users of the product. The Salem Sailing Series could become the Phlegm Sailing Series. Make a list of all the celebrities, materials and promotional products associated with the event. Think of creative, inexpensive ways to turn these aspects of the event into counter promotion tools. For example Spuds MacKenzie could become Duds MacKenzie and instead of the "Original Party Animal," perhaps the "Original Potty Animal." Using your counter promotion title as the theme for a DOC poster contest in the local school classrooms is another great way to generate ideas for your event.

3. DECIDE ON A TIME AND PLACE

Timing is an essential element in planning a successful counter promotions event. If the event being spoofed takes place in your community, a counter promotion will be most effective immediately prior to or during the event. This is when the local media is looking for new angles to present information on an event they have probably covered annually for years. Avoid planning your counter promotion the same day another large community event is taking place, especially youth oriented events. Choose a centralized location for your event which is convenient and accommodates a large number of people. If the counter promotion event is to be held outdoors, decide on an alternative plan in case of bad weather.

4. INVOLVE THE COMMUNITY

A counter promotion event is much more effective when it is presented as a community's expression of their distaste for the promotion of unhealthy products, rather than a health organization protesting smoking or drinking. Here are some suggestions to get others involved:

-Approach other community and civic organizations and encourage them to become involved. Get a definite commitment. Then assign them specific tasks.

-Ask local businesses to donate prizes and money in exchange for having their business associated with good health.

-Plan a DOC poster contest in the local schools in conjunction with the event. The event is a great forum for announcing the winners and awarding prizes. The students and their families will insure you have a good crowd at the event.

-Plan activities which call for audience participation. For instance, if you are spoofing a sporting event, invite local amateur teams to play.

5. PROMOTE THE EVENT

Contact all local media and notify them of the event. Most newspapers and radio and television stations have community calendars or other means by which to announce upcoming special events. You may also want to place flyers or posters announcing the event in local businesses. Approach local sports celebrities and television personalities and ask them to promote and participate in the event. Write letters to the editor of your local newspaper both before and after the event.

A day of smoke-free sports was what attendants to the Fifth Annual Emphysema Slims Tennis Tournament in Augusta, GA, enjoyed on April 29. In addition to the doubles and singles competition held throughout the day, free sports clinics in football, baseball and aerobics were held for kids. The winners in the DOC Superhealth 2000 poster contest (which drew more than 200 entries) were announced. MCG DOC students gave out balloons and free refreshments.

Tobacco firms help *and* hurt black community

Robert C. Newberry

THERE IS AN old fable that says something about a lamb following a wolf in sheep's clothing. Today, that seems to be what tobacco and alcohol companies are trying to get black people to do when they aim their killer products specifically at blacks.

Last year, Dr. Alan Blum of the Family Practice Center at Baylor College of Medicine told me that he was "extremely concerned about the targeting of minority communities by the tobacco and alcohol industries." He had been looking into the subject for nearly a decade, and was disturbed that the situation was worsening.

And worsening it is.

Just the other day, R.J. Reynolds Tobacco revealed plans to test market a cigarette brand with a promotional blitz aimed primarily at blacks in slick ads suggesting glamour, high fashion and night life.

The campaign for Uptown cigarettes is scheduled to begin Feb. 5 in Philadelphia.

But luckily, it is already under fire from anti-smoking forces and some blacks.

"Any time you target something to a definite image you ... are stereotyping," said Mary Clarke, president of the NAACP branch in Charlotte. "I say it's unethical when it targets the black population."

(Actually, just about all advertising is targeted, so blacks are not alone in that.)

Dr. Blum says his organization, Doctors Ought to Care, is planning to launch a counter campaign called Upchuck.

Joanne Schellenbach, a spokeswoman for the American Cancer Society, said the company, based in Winston-Salem, is using blacks as "guinea pigs for something that will kill them in huge proportions."

She continued: "If you are a black person walking around the neighborhoods being bombarded by those kind of messages, it's hard not to be affected by them."

Reynolds says that kind of thinking is paternalistic and that blacks — just as women and white men — have a right to a brand that suits their taste preferences.

That is certainly true. Although it is becoming less fashionable and more difficult to find a place to smoke nowadays, people do have a right to kill themselves with legal substances.

Reynolds is hoping the new menthol brand will carve out a niche in the cigarette market, which overall is shrinking and becoming more segmented.

The campaign will feature people enjoying urban night life in an ad that will read "Uptown. The Place. The Taste."

"We expect Uptown to appeal strongly to black smokers," said Lynn Beasley, Reynolds vice president of strategic marketing. "Black smokers show a strong preference for menthol brands."

Indeed. Seventy-five percent of all black smokers prefer menthol brands, according to the U.S. Office on Smoking and Health in Washington, D.C.

Among black smokers, Newport, made by Lorillard Inc., is the most popular. Brown & Williamson Tobacco's Kool brand and Reynolds' Salem are second and third.

About 7 million blacks smoke cigarettes, representing about 34 percent of the nation's black population and about 13 percent of all American smokers, according to Simmons Market Research Bureau.

The percentage of Americans who smoke dropped from 40 percent to 30 percent since 1964, falling most dramatically among college-educated consumers, according to the U.S. surgeon general's office. The number of black smokers has decreased as well, but not as much.

And according to U.S. Public Health Service figures, black men have a 58 percent higher incidence of lung cancer than white men, and blacks lose twice as many years of life as do whites because of smoking-related diseases.

Dr. Blum: "The tobacco industry says more minorities are blue collar workers and that they are exposed to more occupational hazards. But the fact is, regardless of their occupations, more blacks are smoking and getting lung cancer. To try to explain this away is the height of cynicism."

To be sure, the tobacco and alcohol companies are major supporters of black concerns. They do put a lot of the money they earn off blacks back into the black community. I have to give them that. They advertise in black newspapers and magazines, they underwrite black galas and extravaganzas, and they make donations to vital black organizations. That's certainly more than other industries do.

But at what cost do black people enjoy these companies' generous gifts. It's costing black lives. So many lives, in fact, that the American Cancer Society once published a pamphlet called *Smoking and Genocide*, then reconsidered and changed the title to something less provocative.

It is up to black people to decide on our own whether we want to continue on this course with the alcohol and tobacco companies. No one else can — or should — make this life or death decision for us.

Reynolds right to drop black-aimed cigarette test

Robert C. Newberry

THE R.J. REYNOLDS Tobacco Co. could not have made a better decision than the one it made when it canceled the planned test-marketing of a new mentholated cigarette brand aimed directly at black smokers.

The company did not say whether it would ever introduce its new Uptown brand at all, but it would be just as well if it didn't bother.

The new cigarette was scheduled to be introduced with a test-marketing campaign in Philadelphia beginning Feb. 5, but Reynolds gave in to the mounting criticism from black groups, Hispanic groups, and anti-smoking interests. The organizations were mounting national campaigns against the tobacco company because they believed targeting one race was wrong.

In Houston, Dr. Alan Blum of the Family Practice Center at Baylor College of Medicine, was gearing up his nationwide 5,000-member Doctors Ought to Care (DOC). The organization, comprised of doctors and medical students, was planning a counter-campaign called Upchuck.

In the midst of the harsh criticism, Reynolds acknowledged that Uptown was indeed intended to appeal to blacks. The company was hoping the new menthol brand would find a place in the cigarette market, which is shrinking and becoming more segmented. Giving up on the campaign was a wise public relations move, if nothing else.

Even the nation's top health official criticized the company. Dr. Louis Sullivan, secretary of Health and Human Services, bitterly denounced Reynolds and urged it to cancel its plans for the test-marketing.

Before that, the president of the Charlotte, N.C., chapter of the National Association for the Advancement of Colored People chapter attacked the company.

That was a bit unusual for the NAACP. Black organizations don't often attack tobacco or alcohol companies because the industries pump a lot of the money they make off black people back into black organizations, black newspapers and magazines, galas, and extravaganzas. That's more than most U.S. companies do.

Without a doubt, that seeming generosity toward black causes makes the companies appear to be friends — but don't they get to write off all that money as charitable contributions?

Although their products can be detrimental to health, the companies donate more than most other companies, and they do help some worthy causes in the black community. Too bad so much misery and anguish accompany their generosity.

But it was probably the scathing speech by Sullivan in Philadelphia that got Reynolds to throw in the towel in this one. The company announced its plans to call it quits a day after the speech. Sullivan said it was time to "resist the unworthy efforts of the tobacco merchants to earn profits at the expense of the health and well-being of our poor and minority citizens."

Reynolds complained that the new brand was receiving "unfair and biased attention" and that "this represents a loss of choice for black smokers and a further erosion of the free enterprise system." What? It's a little amusing that Reynolds would have the nerve to say that.

Peter Hoult, Reynolds executive executive vice president for marketing, said in the company's news release, a "small coalition of anti-smoking zealots" forced the tobacco firm to cancel its plans.

"Our intentions to test marketing Uptown in Philadelphia have been misconstrued and misrepresented by the anti-smoking lobby," Hoult said. "Our sole purpose, plainly and simply, was to test-market a cigarette among smokers who currently buy competitive products."

That could be, but the ad campaign certainly would have been enticing to young, impressionable non-smokers.

The campaign featured black people enjoying urban night life in an ad that read "Uptown. The Place. The Taste."

In his speech, Sullivan noted that blacks are more likely to be smokers and therefore suffer higher rates of lung cancer, heart disease and strokes.

According to Simmons Market Research Bureau, about 7 million blacks smoke cigarettes, representing about 34 percent of the nation's black population and about 13 percent of all American smokers.

And According to an article in the July, 1985 issue of the New York State Journal of Medicine by Drs. Richard Cooper and Brian Simmons, "smoking is a crucial example of how the health of the black population has worsened . . . Blacks now suffer the highest rates of coronary heart disease and lung cancer of any population group in this country."

Are those companies doing us a favor?

72

Butt out
of my life
DELAWARE VALLEY HMO
Performance Counts.
VANTAGE

A sixth-grader's winning ad comments on another billboard.

Doctors Fight the Effects of Tobacco Ads on the Young

NEW YORK—Advertising is one of the many ways in which the media influence health-related behavior. The influence of advertising can be positive, but it also can be pernicious; perhaps the clearest example is in the case of tobacco advertising. Cigarettes are the most heavily advertised product in America, with advertising and promotional budgets totaling $2.1 billion a year, according to the Federal Trade Commission.

Tobacco advertising and its influence on smoking behavior have become a hotly debated issue. Health professionals argue that advertising is designed to lure new smokers into the fold and get former smokers to light up again. Advertisers and representatives of the tobacco industry say they promote their products only to keep smokers loyal to their brand and to get other smokers to switch.

Health professionals concerned about the influence of tobacco advertising try to counter its effects through various strategies. One group called Doctors Ought to Care (DOC) uses parodies of cigarette ads and offers a curriculum that teaches young people to look at advertising with a critical eye. DOC and many other groups call for an outright ban on tobacco products.

Mention of such a ban draws cries of censorship from the tobacco industry, the media, the advertising industry, and the American Civil Liberties Union.

Nonetheless, a bill is now before Congress to outlaw all promotion of tobacco products, including advertising, sponsorship of cultural and sporting events, and the distribution of free samples of cigarettes. Supporters of the ban include the American Lung Association, the American Heart Association, the American Cancer Society, and the American Medical Association.

Some legal scholars argue that a ban would be unconstitutional and threaten free speech. Because tobacco is a legal product, ucts manufactured and sold legally. Advertising is considered commercial free speech, is a category protected by the First Amendment, though not as extensively as political or religious speech.

William G. Miller, a White Plains, New York, lawyer who favors banning tobacco ads, says, "Tobacco is uniquely pernicious. If it is taken as intended, it harms the consumer. Cigarette advertising is deceptive, and unfortunately, most of it is aimed at the young. The imagery in advertising is alluring, but it doesn't provide any information about price and ingredients. It portrays happiness and health, but doesn't say that the end result is disability and disease."

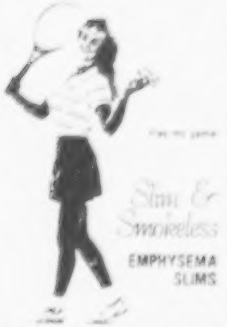
Miller says that 60 percent of all smokers are addicted before they are 15 years old, and 90 percent are hooked by the time they reach 20. "Free speech is desirable, for sure, but so is protection of the young," he adds.

Even the federal government is dependent on tobacco, collecting millions of dollars annually in excise taxes on cigarette sales.

Fighting all the deeply entrenched tobacco interests is a formidable task, but since 1977 DOC, a group of young physicians, has taken up the challenge with a national anti-tobacco advertising campaign. DOC uses the same tactics that Madison Avenue employs to sell products for tobacco manufacturers—but instead produces spoofs of the tobacco ads.

Alan Blum, the founder of DOC, says the organization's work is aimed primarily at young people. "We want them to be able to turn the tables on Madison Avenue's promotion of unhealthy living so that they can assume responsibility for their own lives by making the best health choices," says Blum.

DOC's advertising budget of $10,000 to $20,000 a year for billboards, posters, bus cards, broadcast public service announcements, and bumper stickers is minuscule compared to the giant tobacco advertisers. The organization is supported by contributions from its 3,500 members, who are physicians, medical students, and health professionals.



One of the cigarette ad parodies created by DOC.

"We use sexy models and humor to get our message across. Our model totes a tennis racket and touts Emphysema Slims instead of Virginia Slims. We use advertising's methods to undermine its own message," says Rick Richards, president of DOC.

"If we can make her look like so much makeup and nothing more, the teenager who sees it will laugh at it," says Richards. "When we can effectively spoof the image, we effectively destroy the cigarette advertising campaign."

Philip Morris, Inc., which manufactures Marlboro and other brands, sponsored an essay contest offering a $15,000 top prize, in which it asked contestants to write about how an advertising ban on tobacco products would affect "the future of free expression in a free market economy." DOC has responded with its own contest, asking entrants to write on the question "Are Tobacco Company Executives Criminally Responsible for the Deaths, Disease, and Fires Their Products Cause?" The winner will receive a prize of $1,000.

In some states, DOC has gained approval from education departments to present its own antismoking curriculum to sixth-graders.

Mark Glassner, chairman of DOC's Education Committee, worked with a small group of DOC members to create the curriculum for Delaware, his own state. The curriculum consists of five basic sessions, with suggestions for additional activities that the teacher can initiate. This curriculum now is used by the national DOC organization when it receives requests for antismoking materials for schoolchildren.

In the first session, the students are asked to interview a smoker. The youngsters receive a list of questions to ask the adult smoker. "The idea is to get the students to find out what smoking is like without actually being hurt by smoking," says Glassner.

The second session allows the children to discuss the results of their interviews and learn about the power of addiction.

For session three, the students build a smoking machine from household materials and learn about the tar, carbon monoxide, and other noxious substances in tobacco smoke.

Students view the film *Death in the West* in the fourth session. In the film (produced in England by Thames Television), commercials showing the "Marlboro Man" enjoying his cigarette are presented along with the stories of real-life cowboys who are dying of lung cancer, heart disease, and emphysema. After the viewers hear the smokers' stories, they hear statements from tobacco company executives in defense of smoking.

A slide show is presented to the sixth-graders in the final session. The DOC representative who gives the show explains the tactics used by the advertising industry to promote smoking, helping children gain a critical understanding of the ads that bombard them 24 hours a day.

"Kids can name more brands of cigarettes than they can name presidents of the United States," says Glassner. "It's difficult to sell health to someone who already has it. All we can do is show these children the images used in advertising and how they're being brainwashed by them. Money and looking good are important to young adolescents—and those areas are where we try to appeal to the kids. We point out that one pack a day costs $600 a year and how that can buy a lot of records, tapes, and clothes."

The Delaware DOC organization follows up on the curriculum with a poster contest for students. The subject matter is cigarette advertising and the images that tobacco manufacturers use in selling their products. Four winners are picked from each school. From this pool of contestants, one state winner is chosen and his or her poster is enlarged and displayed on billboards throughout the state.

DOC's founder says the organization is image-based, not information-based. "We emphasize getting into the streets and doing things to get people's attention. We've put on demonstrations outside art exhibits" sponsored by tobacco companies, says Blum.

DOC also launched a campaign in which it sent black-bordered death notices to congressmen alerting them that one of their constituents had died of a tobacco-related illness.

While groups like DOC work to accelerate the antismoking movement, the Tobacco Institute, the trade association for cigarette manufacturers, is in the business of lobbying and press relations for the tobacco companies. Walker Merryman, vice president of the institute, says that proponents of the tobacco ad ban don't realize that "if the ads go, the surgeon general's warnings in those ads go also. These ads make one billion impressions annually."

As far as the health controversy over smoking goes, Merryman says: "It's our long-standing position that the American public is fully informed about what the surgeon general says in regard to smoking. Adults have the right to make their own decisions about whether to smoke or not.

"The industry does not want youngsters smoking cigarettes," says Merryman. "Youngsters should consult with their parents, trust adult advice, and defer many decisions—like smoking—until they become adults."

Blum scoffs at these claims by what he calls "the PR arm of the tobacco industry." To him, anyone who promotes tobacco is a drug pusher. "Advertising and tobacco company executives should be put in jail for promoting these products. The person who buys cigarettes and smokes them has no idea what's in the cigarettes he buys. It's difficult to compete with advertising. There won't be any progress until people begin to acknowledge just how pervasive ads are and how much influence advertising has over them."

Just because tobacco is legal doesn't mean publishers have to accept advertising, says Blum. "Publishers are not passive recipients of tobacco ads—they go out and actively solicit them."

A small number of newspapers reject tobacco ads. Among them are *The Christian Science Monitor*; the *Daily Record* of Morristown, New Jersey; *The Deseret News*, Salt Lake City, Utah; the *News-Banner*, Bluffton, Indiana; and *The Salina Journal*, Salina, Kansas.

Blum has established a DOC tobacco archive, which he says will counteract the work of the Tobacco Institute. "It offers a different perspective in terms of the history and scientific thought surrounding tobacco," Blum says. "It will serve as a resource for researchers in any field touching on tobacco and its promotion."

—Constance Grseika

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Mark Glassner, M.D., 1364 Marrows Road, Newark, DE 19711.

Walker Merryman, The Tobacco Institute, 1875 I St. N.W., Washington, DC 20006. 800/424-9876.

The CHAIRMAN. Well, thank you very much for that very provocative, interesting testimony and its powerful message in the way you have presented it and accumulated the material.

Let me ask you, you made some reference in your earlier testimony about reaction in Houston to the promotion of Dakota. Could you tell us a little bit more about that?

Dr. BLUM. Yes, Senator. The headline in Saturday's *Houston Post* is called "Officials Fume over Test Cigarette." City Councilwomen are angry about what is going on to target childbearing women with cigarette advertising. We have formed a group already; several women have gotten together, and I helped to bring them together, to start a group called "Houston Puts Out Smoking in Tennis," which stands for "Houston POST," which happens to be the cosponsor of the Virginia Slims Tennis Tournament.

We are very concerned about new marketing efforts, but we can't seem to understand why it is that current efforts seem to go scot-free such as tonight's Virginia Slims. We need all efforts to look at the major brands such as Marlboro, Virginia Slims, Camel and Winston.

The CHAIRMAN. You have been a proponent of counter-advertising for some period of time. What kind of response have you received?

Dr. BLUM. Well, I suppose this is why I have the privilege to speak here today, Senator, after 750 talks around the country. In 1977 when we as doctors purchased $3,000 worth of bus bench counter-advertising to say "Country Fresh Arsenic" and "Ten-Year Supply only $7,000" and "Full-Bodied Cyanide" and all the other images that we were doing, nobody thought that this was going to matter. But one-by-one, people said that's pretty funny, and that really gets to them, and more and more schools were asking us to come there, and more and more kids were taking it upon themselves to say these kinds of advertisements are going to work in their schools and outside their schools as well.

The CHAIRMAN. How do you address a point that is made that if we go to counter-advertising or paid advertising, it is going to dry up public service time that might otherwise by provided?

Dr. BLUM. My mentor in media, Tony Schwartz, once defined public service advertising as those are the kinds of ads that are on at 3 o'clock in the morning, telling kids not to take rides with strangers, when the only people up at that time of night listening are the strangers.

I think you and I both know that public service advertising is no advertising at all; that any effort we have to purchase prime time advertising where the kids are—all you need to sell cigarettes to kids is a map, a calendar and a coloring book. That's where the kids are on the map. That's when they'll be there on a calendar.

We have not used those tools in counter-marketing, and we need the funding to do that.

I would add that we have never received any public funding for DOC, and I think that that somewhat belies the testimony of the secretary. We are talking not about more research. I certainly hope you will not let your bill devolve into another bill that is just going to go for more statistics generation. That is what the tobacco industry wants, Senator.

The CHAIRMAN. The industry says there are enough laws on the books at the present time. What is your reaction to that?

Dr. BLUM. This is the most unregulated industry in history. They basically provide—well, my boy came home the other day with his copy of the Philip Morris Bill of Rights. I wanted to learn more about Philip Morris, so I read what they gave us, and Philip Morris does not even identify itself as the leading cigarette manufacturer in the world.

You would think that companies that make this product, if they claim that there is nothing harmful about them, wouldn't really mind if kids did use them. What's so wrong about smoking—we ought to ask the tobacco companies.

I think their whole lie has been that they have lived off the myth that this is an adult, dangerous and risk-taking and sophisticated custom. In fact, it is silly, childish and rather childish-looking. In essence, they are not a package goods company. They are not any good at all. They are making products that kill people. And I feel that if we are talking about regulating them, we haven't even begun to regulate them.

The CHAIRMAN. They say that people understand that smoking is dangerous already, so what are you going to be able to achieve by doing something more?

Dr. BLUM. Well, why don't we turn the question around, Senator, and ask if everybody has already heard about Marlboro, why do they need to be everywhere.

I don't know whether you saw a magazine called *Channels*; it is a broadcasting magazine. We did an analysis of the 1989 Marlboro Grand Prix on NBC which you just saw. In a 93-minute telecast, there were 4,997 raceway signs for Marlboro plus 519 large billboards and 249 pictures of that Marlboro car you just saw. That occupied 46.17 minutes, almost half the time, 49 percent of what you saw, you saw the logo or the word Marlboro.

It seems to me that racing wasn't like this a few years ago when there was cigarette advertising overtly allowed on TV. All they have done is switch places.

It reminds me of the Laurel and Hardy movie where they were kicked out of the tavern, and they put on some fake moustaches, and they were immediately recognized. And the bartender said, "Hey, I thought I told you guys to stay out of here."

And Stan Laurel says, "Who, us? We're not us. We're two other guys."

That's basically who they are. They've put on a fake moustache, and they've put a racing car for kids.

The CHAIRMAN. Senator Dodd?

Senator Dodd. Mr. Chairman, I apologize for being a few minutes late and missing the earlier testimony, and I thank the doctor for being here.

Just let me ask this general question, and I think I know your answer to it, but for purposes of the record. I know of no physicians who have argued that there are no ill health effects as a result of smoking. Everyone seems to conclude that it is terrible for you—the obvious cancer, emphysema, low birth weight babies and so forth—and yet the advertising seems to suggest, or at least makes an effort to associate cigarette smoking with good health—the Virginia Slims tournament and so forth, even some of the photographs of people in athletic activities or in post athletic activities.

What would your comment be on that?

Dr. Blum. Well, in order to get to kids with the counter-images, which is all we ask, I think the advertising community and the media corporations ought to bless this bill because it does not prohibit cigarette advertising; it merely allows a fighting chance to get to kids on equal turf—and not even equal turf—a very small fraction of what they are spending. In fact, that's not the case. They are not willing to donate free time, and therefore this bill has to occur. It has to occur to reinforce the positive images not just of not smoking but of saving your money. That is a crucial consumer buying practice. Looks, sex and money for better or worse matter more to kids than a generic concept called "health." I think we have really fallen way behind. Judging from the sponsorship of Marlboro cigarettes for the 1994 World Cup, we are about 4 to 5 years behind their marketing strategies.

Senator Dodd. Thank you very much.

Thank you, Mr. Chairman.

The Chairman. Let me just ask you, have you taken a look at what the companies have been doing overseas as well?

Dr. Blum. Yes, sir.

The Chairman. We are going to get into that another time, but as it is related to this subject matter, is there any brief comment you wish to make?

Dr. Blum. Well, Dr. Greg Connolly has almost single-handedly in your State, Senator, looked around the world. When you consider, of all the researchers in this country paid full-time, excellent salaries to fight cancer, when you look at all the people looking at AIDS now, do you realize that there are perhaps not any, apart from Dr. Davis at the Office on Smoking and Health and a couple of his allies, that are working full-time to even study and counteract the imagery and the way in which the marketing of tobacco goes on.

What we are doing unfortunately is putting it in the hands, what little efforts there are, of people who are still fearful of offending the tobacco companies. It is terribly ironic, as you pointed out earlier, that we are going down to the coca growers in Colombia and asking them to desist while we are forcing Thailand and other countries to take up our Marlboro cigarettes—which by the way, commercials are still being shot today in Wyoming and other States.

It seems to me what we are trying to do is simply make up for our trade deficit in a very perverse way.

The Chairman. OK. Thank you very much. That has been very helpful testimony.

We will next hear from Mr. Charles Whitley, Counsel of the Tobacco Institute, and Tom Boggs, with the Freedom to Advertise Coalition.

We are glad to have you, and we'll ask Mr. Whitley to begin.

STATEMENTS OF CHARLES O. WHITLEY, COUNSEL, THE TOBACCO INSTITUTE, ACCOMPANIED BY FLOYD ABRAMS, COUNSEL; AND TOM BOGGS, PARTNER, LAW FIRM OF PATTON, BOGGS AND BLOW, REPRESENTING FREEDOM TO ADVERTISE COALITION, ACCOMPANIED BY RAY O'HARE, COUNSEL

Mr. WHITLEY. Thank you, Mr. Chairman.

We appreciate this opportunity to appear at your hearings. We have listened to the testimony of previous witnesses. I am glad to see Senator Dodd, with whom I had the privilege of serving in the House a number of years ago.

We would just like to offer our complete statement for the record.

The CHAIRMAN. It will be so included.

Mr. WHITLEY. We have been asked to summarize. I would like to mention the fact that I have with me Mr. Floyd Abrams, who is a leading expert in the constitutional aspects of advertising. He has taught First Amendment law at Yale and Columbia law schools and at the Columbia Graduate School of Journalism. I think Mr. Abrams has argued more cases before the U.S. Supreme Court involving freedom of the press than any lawyer in American history. He is widely published. We had hoped that he would have an opportunity to testify. We have been told that due to the press of time, that won't be possible, but he is with me today, and he has submitted a statement for the record, and we hope he will be afforded an opportunity to respond to questions specifically on the subject of advertising.

Mr. Chairman, Dr. Sullivan's statement was long and eloquent, but his bottom line was that he does not see a need for the legislation that is the subject of this hearing today. And one of the reasons for that was all of the things that are already in place. Nobody opposes education. But the American public, including youngsters, are already educated to the perceived health hazards of cigarettes.

Despite what a number of witnesses have said here this morning, independent survey research including that originated by HHS in 1985 demonstrates that not only have 98 percent of Americans heard that smoking is a health threat, 95 percent believed it increased the risk of lung cancer, 92 percent believed it increased the risk of emphysema, and 91 percent believed it increased the risk of heart disease.

Now, Mr. Chairman, instead of changing warning labels, letting the States tamper with national standard advertising policy, requiring long lists of ingredients to be provided to bureaucrats and the public, creating a new bureaucracy and spending hundreds of millions of dollars of public funds badly needed for hundreds of other critical purposes, consider the programs already in place. They include, as Dr. Sullivan mentioned this morning, their Office of Smoking and Health, established pursuant to the Smoking and Health Act of 1984. Dr. Sullivan, I believe, said that that office is very active and intends to remain active and even to increase its level of activity.

You have—I think you held it up there this morning, Mr. Chairman—this list of ingredients in cigarettes already being provided to

HHS as required by the same act. And let me say, Mr. Chairman, that the industry and the individual companies have submitted five separate lists of ingredients. There has been communication back and forth between the Office of Smoking and Health and the secretary's office and the companies over this time, with specific questions about those ingredients.

Dr. Sullivan said this morning that recently, the department had decided that it needed quantitative information about ingredients, and they wrote a representative of the industry last week, and 2 days later the industry responded—I don't suppose the secretary had seen that this morning; he indicated that he had not—but 2 days later the industry responded that that quantitative information would be forthcoming and offered again to work and cooperate with the secretary to the degree that he felt was necessary to make any essential determinations about ingredients. And the secretary is already mandated by the Smoking and Health Act of 1984 to report to Congress whatever findings and recommendations he feels are necessary in connection with the ingredients or further disclosure of ingredients or additions or deletions of ingredients. So that is already going on.

In the case of nicotine, tar and carbon monoxide, there is a laboratory which is owned and operated by The Tobacco Institute but which is monitored on a daily basis by the Federal Trade Commission, that uses a method approved by the Federal Trade Commission, to test for tar, nicotine and carbon monoxide. That information is already available to FTC. An annual list is published showing what brands contain what levels of tar and nicotine. Cigarette advertisement in this country is required to show the tar and nicotine content.

So that is already being taken care of.

There are laws and regulations all the way from—some of those we've mentioned and others—from the national government to small municipalities, and I think anybody would be struck this morning in listening to what has gone on. You mentioned, Mr. Chairman, activities in Boston, Massachusetts, in New England—intensive State and local efforts, doing additional regulatory work, increasing the level of regulation of cigarette smoking. Senator Durenberger and Sister Ashton and others mentioned Minnesota and the Midwest. Senator Hatch mentioned his area. You and others even mentioned States like Virginia and North Carolina, which are tobacco States.

So we don't believe that there has been demonstrated a great need to provide money to States to step up their level of activity. They already have an extremely high level of activity. And as Sister Ashton, speaking for the association of State governments, indicated, that level is increasing all the time.

In addition to that we have the annual reports by the surgeon general on smoking and health, and there is a brand new report that we saw for the first time when we walked in this morning. These annual reports not only recite extensive summaries of epidemiological studies, but consistently and deliberately draw very dire conclusions from these studies, and they seem to grow more surreal every year. These are highly publicized by the media and elsewhere.

Then there are extensive, highly publicized, well-organized and well-financed anti-smoking campaigns in the private sector. We are familiar with those. The Great American Smokeout was mentioned this morning, which is an annual event. It is a perfect example, and there are many others. And all the major news media are very quick to give extensive coverage to anti-smoking laws, anti-smoking campaigns and health claims, no matter how reasonable or unreasonable they may be.

But you might raise the question, Senator, well, if these things are going on, they are not working, they are not accomplishing the desired results.

Well, let's point to a few results that have been accomplished. The prevalence of smoking by adults since 1965, according to the surgeon general's report, has dropped from 40 percent to 29 percent. One out of every two Americans who smoked has quit. Between 1965 and 1985, 41 million Americans quit smoking—90 percent of those, Mr. Chairman, alone, without any outside help. This is according to the surgeon general's own report in 1988. Now, this certainly does not sound like tobacco has the same addictive qualities as heroin and cocaine, when half the people who ever smoked have quit. Certainly you can't say that about habitual users of hard drugs.

By 1985, the group of ex-smokers in this country outnumbered people who smoked more than 25 cigarettes a day by a three-to-one margin. That comes from the 1988 United States Statistical Abstract.

Concern has been expressed about young people. The prevalence of daily smoking among high school students dropped from 29 percent to 21 percent between 1976 and 1980 and has fluctuated between 18 and 21 percent since that time.

Now, Mr. Chairman, as far back as 1979, the surgeon general said in his Report on Smoking and Health by the time they reach the seventh grade, the vast majority of children believe—not have heard, but believe—that smoking is dangerous to one's health. That's a direct quote. As recently as 1987, a survey reported in the *Journal of the American Medical Association* found that of 895 children and adolescents questioned, over 98 percent said they believed smoking is harmful—and this again is a direct quote—"accurately named one or more body parts that are adversely affected by smoking."

In short, Americans, young and old, in all sectors and in all socioeconomic groups, have been educated to the alleged health risks of smoking, and a sizable majority has elected to stop smoking or not to start. Others have chosen to assume whatever risk exists, just as many Americans knowingly assume other risks that are a part of their chosen lifestyle.

Let me talk just a minute or two, Mr. Chairman, about advertising. There has been allegation after allegation here, and we have heard over and over from the anti-tobacco forces that the cigarette industry advertises with the deliberate purpose in mind of inducing young people and others to begin smoking, to in effect expand the market of smokers.

Now let me address that just a minute. We have always advertised, just like every other industry advertises, particularly for a mature product, a product that has been out there a long time, not a brand new product that we are trying to inform people about for the first time, and that is our individual companies which are highly competitive; they are probably the most competitive companies in the American merchandising arena today. Their competition is very intense. And they are out there fighting for market share; they are out there fighting to induce people who smoke to smoke their brand, to induce those who already smoke their brand to retain that brand loyalty, and that is the purpose of the advertising.

I want to quote again Dr. Koop's report of 1989. This again is a direct quote: "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption." This is an admission by the surgeon general that there is no significant empirical evidence that advertising increases the level of consumption.

The 1987 report to the President of the Council of Economic Advisers says this: "There is little evidence that advertising results in additional smoking. As with many products, advertising mainly shifts consumers among brands. Evidence from other countries"—and this is significant as well, Mr. Chairman—"suggests that banning tobacco advertising has not discouraged smoking."

I now want to quote Michael Perchunk, the former chairman of the Federal Trade Commission and a leading anti-smoking advocate. He said this: "No one pretends that advertising is a major determinant of smoking in this country or any other."

Now, those are the facts, Mr. Chairman, as admitted by responsible public officials, that advertising does not serve the purpose of increasing the level of smoking, but instead it is the tool by which the companies attempt to retain or gain market share.

Now let me say just one other thing on the subject of advertising, Mr. Chairman. Some of our companies this morning and otherwise have been severely castigated by what has been described as "targeted advertising." You know, in your bill, Mr. Chairman, this committee and your legislation really does the same thing. Your legislation tries to look and see who it is who is smoking cigarettes and then target a program to those groups to encourage them not to smoke cigarettes. I think every manufactured product sold in this country, mature products that are out there—if you start to introduce a new model of automobile, for example—say you want to compete with the Ford Taurus, just to pick something out of the air—General Motors is going to compete with it. You are going to hire marketing experts, and you are going to look and find out who it is that is buying the Ford Taurus now, and what those people are looking for in a car, and then you are going to target your marketing and your advertising scheme accordingly.

Why should it be any different in the cigarette industry? I would remind the chairman and the committee that there is a legitimate market out there of women who smoke cigarettes. It is not trying to persuade women who don't smoke to smoke. But if you manufacture and sell cigarettes, and there is an established market out there of women smokers, why is it somehow different for a cigarette manufacturer to target an existing market than it is for other companies to target an existing market? We just fail to understand the difference between our industry, which is selling a lawful product on a lawful market, and other industries which are selling a lawful product on a lawful market.

Mr. Chairman, this is a long bill; there are a lot of different provisions in it. I am not going to trespass further on your time. I will stop my statement at this time and be glad to respond to questions that you have.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Whitley follows:]

PREPARED STATEMENT OF CHARLES O. WHITLEY ON BEHALF OF THE TOBACCO INSTITUTE

Mr. Chairman and distinguished members of the committee, we appreciate this opportunity to testify on S. 1883, the "Tobacco Product Education and Health Protection Act of 1990."

S. 1883 would add a new Title IX to the Public Health Service Act, creating a Center for Tobacco Products.[1] This new agency, which would have powers and duties similar in some respects to those of the Food and Drug Administration, would be located within the Public Health Service at the Centers for Disease Control. S. 1883 would authorize $185 million to carry out the activities of the Center and other anti-smoking programs under the bill in Fiscal Year 1991.

Among other things, the Center would be directed to regulate "tobacco additives" and to inform the public of such additives and "harmful tobacco smoke constituents." The Center also would be directed to underwrite a broad range of anti-smoking initiatives by private entities and State and local authorities, including anti-smoking campaigns in schools and workplaces, and to "coordinat[e] with film makers, broadcast media managers and others regarding the impact of media on tobacco use behavior."

S. 1883 would permit State and local governments to regulate "the placement or location of tobacco product advertising that is displayed solely within the geographical jurisdiction" of the State or local government involved. This would include advertising on billboards and mass transportation facilities, point-of-sale advertising and, possibly, event sponsorship and other promotional activities. In addition, S. 1883 would authorize State and local restrictions on the advertising, promotion, sale or distribution of cigarettes to persons under 18. Finally, S. 1883 would replace the surgeon general's carbon monoxide warning with an "addiction" warning.

In addressing S. 1883, Mr. Chairman, I want to stress the common ground we share. The cigarette industry does not want young people to smoke. We believe that smoking is for those adults who choose to smoke. S. 1883, however, is ill-advised and should be rejected. It proposes regulation and spending as ends in themselves without any legitimate rationale.

S. 1883 would establish a new Federal agency to investigate tobacco "additives"—even though the safety of additives is currently the responsibility of the Secretary of Health and Human Services under existing law and there has been no suggestion of health concerns based on the additive information supplied to the secretary by the cigarette manufacturers to date.

S. 1883 would require blanket disclosure of tobacco additives—even though disclosure of tobacco additives to the Secretary of Health and Human Services is required by existing law and comparable additive information is exempt from public disclosure on trade secret or impracticality grounds under the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act.

S. 1883 would require disclosure to the new agency of "tar," nicotine and carbon monoxide levels of tobacco products—even though such information already is disclosed to the Federal Trade Commission and the public by voluntary agreement or on the request of the Commission.

S. 1883 would distribute $50 million a year to anti-smoking groups for anti-tobacco advertising campaigns—even though Americans are already universally aware of the claimed risks of smoking.

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[1] The Public Health Service Act does not contain a "Title VIII." The Act refers to subchapters not titles, and there is no subchapter VIII or VII. Presumably, the provisions designated as "Title IX" in S. 1883 would appear as subchapter VII of the Public Health Service Act.

S. 1883 would make $50 million a year available for anti-smoking programs in schools and workplaces—even though State and local governments are already pursuing such programs aggressively on their own.

S. 1883 would require an "addiction" warning on cigarette packages and cigarette advertising—even though one of every two smokers has quit, most of them without professional assistance, and even though calling smoking an "addiction" trivializes our Nation's serious drug problem.

S. 1883 would encourage State and local governments to attempt to restrict cigarette advertising to adults in the name of protecting minors, despite the U.S. Supreme Court's repeated admonitions that government "may not reduce the adult population . . . to reading only what is [deemed] fit for children."

S. 1883 would allow each State and local government to establish its own rules and regulations for the placement or location of cigarette advertising within its borders, thereby inviting censorship in violation of the First Amendment and abandoning to that extent Congress's consistent 25-year policy of nationally uniform regulation of cigarette advertising.

I will discuss these points in detail.

1. Center for Tobacco Products. Sec. 901(a) of the new title created by S. 1883 would direct the Secretary of Health and Human Services to establish a Center for Tobacco Products within the Public Health Service, at the Centers for Disease Control. The Center would assume the functions and duties of the Interagency Committee on Smoking and Health. Sec. 903(b)(1).[2]

(a) Additives. Under Subtitle A of new Title IX, the Center would be directed to "inform the public regarding constituents of, and additives to, tobacco products," and to "restrict the use of additives that represent a significant health risk to the public." Sec. 901(b)(3) and (4).[3] The Center would be directed to investigate the additives contained in tobacco products and to determine whether such additives "represent a significant added health risk to consumers of such products." Sec. 902(a)(1). If the Center "determines that any tobacco additive, either by itself or in conjunction with any other additive, presents unnecessary increased risks to health," the Center would be authorized to prohibit the use of a tobacco additive or allow its use only at reduced levels. Sec. 953(b)(2).

The Center would be directed to require public disclosure, through labels or package inserts, of tobacco product additives and "harmful tobacco smoke constituents." Sec. 902(a) (1) and (2). Cigarette manufacturers would be required to provide to the Center "a complete list of each tobacco additive used in the manufacture of each tobacco product brand name and the quantity of such additive" (Secs. 953(a), 951(a)(1)), and "a complete list of all brands of such tobacco products that includes the levels of the tar, nicotine, carbon monoxide, and other constituent (as determined by the Center) for each brand as determined by the manufacturer" (Secs. 954, 951(a)(2)).

Mr. Chairman, many of these provisions substantially duplicate existing law. To the extent these provisions would change existing law, the change would serve no demonstrable policy objective. These provisions also would threaten public disclosure of commercially sensitive information that currently is protected from public disclosure as trade secret or confidential information. Such disclosure would produce no public benefit.

Under the Comprehensive Smoking Education Act, enacted in 1984, the cigarette manufacturers are required to provide the Secretary of Health and Human Services on an annual basis "a list of the ingredients added to tobacco in the manufacture of cigarettes." 15 U.S.C. § 1335a(a). The list provided to the secretary need not identify the company involved or the brand of cigarettes that contains the ingredients. *Ibid.* Congress considered the disclosure of cigarette ingredient information on this basis to be adequate to "permit the Federal Government to initiate the toxicologic research necessary to measure any health risk posed by the addition of additives and other ingredients to cigarettes during the manufacturing process." H.R. Rep. No. 805, 98th Cong., 2d Sess. 21 (1984).

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[2] At the same time—apparently by design (see Sec. 927(1))—the bill would reestablish the Interagency Committee (see Sec. 928(c)), without altering the committee's functions or duties and without repealing the existing law establishing the committee (Sec. 3(b) of the Comprehensive Smoking Education Act (15 U.S.C. § 1341(b))). Meanwhile, Sec. 4 of S. 1883 would add a new paragraph (7) to Sec. 3(a) of the Smoking Education Act, even though that new paragraph is not incorporated in Sec. 928(b), which otherwise reproduces Sec. 3(a).

[3] "Constituent" would be defined as "any element of a tobacco product that is not an additive." Sec. 961(3). "Tobacco additive" would be defined to mean "any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product." Sec. 961(15).

The secretary, in turn, is directed to transmit to Congress periodic reports advising Congress of any information pertaining to such ingredients "which in the judgement [sic] of the secretary poses a health risk to cigarette smokers." 15 U.S.C. § 1335a(b)(1)(B). Each year since 1986, the six major cigarette manufacturers have jointly submitted ingredient lists to the secretary as required by the 1984 legislation. The most recent list was submitted just this past December. In 1988, Surgeon General Koop indicated that the Department of Health and Human Services was actively reviewing the ingredient lists that had been submitted. There is no reason to believe that this existing review mechanism is inadequate and needs to be expanded or replaced.

Neither is there any justification for requiring public disclosure of tobacco additives. Because information concerning the ingredients used to manufacture particular cigarette brands is competitively sensitive, Congress provided in the Comprehensive Smoking Education Act that the ingredient information supplied to the secretary "shall be treated as trade secret or confidential information." Such information is exempt from disclosure under the Freedom of Information Act and criminal penalties are established for unauthorized disclosure. *Id.* § 1335a(b)(2)(A). The Act specifically requires the secretary to establish "written procedures to assure the confidentiality of [such] information." *Id.* § 1335a(b)(2)(C). He has done so. *See* 50 Fed. Reg. 49,617 (1985).

In 1984, Congress considered and rejected public disclosure of ingredient information—and for good reason. As originally introduced in the 97th Congress, the House version of the legislation ultimately enacted in 1984 would have required ingredients to be listed on cigarette packages.[4] Opposing such a requirement, The Tobacco Institute's witness explained:

> "Cigarette manufacturers use a variety of ingredients to enhance flavor and appearance and preserve shelf life. These ingredients are among each manufacturer's most closely held trade secrets. There is no justification for denying cigarette manufacturers the trade secret protection extended to every other consumer product industry."[5]

The Institute's witness also pointed out that requiring package disclosure of additives, "combined with the ... health warnings and tar, nicotine and carbon monoxide numbers, would turn cigarette packages into little textbooks, likely causing smokers to ignore it all." *Ibid.*

Congress responded to these objections in the 1984 legislation by providing trade secret protection to the ingredient information supplied to the secretary. In addition, it made clear that ingredient information was to be submitted to the secretary in a manner that does not identify the company involved or the brand of cigarettes containing particular ingredients.

The considerations that supported Congress's decision to treat ingredient information in this way in 1984 remain valid today. Similar considerations are reflected in broad ingredient disclosure exemptions under the Federal Food, Drug and Cosmetic ("FD&C") Act and the Fair Packaging and Labeling ("FP&L") Act. Indeed, Mr. Chairman, it is fair to say that most tobacco additives would be exempt from disclosure under these laws and the implementing regulations of the Food and Drug Administration.

(1) Food. Congress explicitly has exempted flavorings, colorings and spices used in food from disclosure under Sec. 403 of the FD&C Act, 21 U.S.C. § 343.[6] It requires the FDA, moreover, to establish further exemptions from disclosure for food ingredients "to the extent that [disclosure] is impractical, or results in deception or unfair competition." *Ibid. See, e.g.*, 21 C.F.R. § 101.100(a)(3) (1988) (exempting "incidental additives," including "processing aids," from disclosure).

(2) Cosmetics. The FDA, exercising its authority under Sec. 5(c)(3) of the FP&L Act, 15 U.S.C. § 1454(c)(3), likewise has exempted from disclosure the ingredients of flavors and fragrances used in cosmetics. 21 C.F.R. § 701.3(a) (1989). The FDA ex-

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[4] H.R. 5653, 97th Cong., 2d Sess., p. 7 (March 1, 1982).

[5] *See Comprehensive Smoking Prevention Education Act: Hearings on H.R. 5653 and H.R. 4957 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 97th Cong., 2d Sess. 355 (1982).

[6] Sec. 403(g)(2) requires the label of any food for which a "standard of identity" has been prescribed by regulation to list, insofar as may be required by regulation, "the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food." Sec. 403(i)(2) requires the label of any food fabricated from two or more ingredients, for which a standard of identity has not been prescribed, to list "the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each."

plained that these were "the two types of cosmetic ingredients which would be the most likely of any to create trade secret issues." 38 Fed. Reg. 28,912 (1973). The FDA also noted that disclosure of such ingredients "would be impractical." *Id.* at 28,913. *See, e.g.*, 21 C.F.R. § 701.3 (1) and (2) (1989) (exempting "incidental ingredients," including "processing aids," from disclosure). The FDA concluded that it would not be impractical to disclose by name colors used in cosmetics but the agency carefully provided that a color whose identity is a trade secret may be exempted from disclosure. 38 Fed. Reg. 28,913 (1973). The FDA has recognized, generally, that Sec. 5(c)(3) of the FP&L Act does not authorize it to promulgate ingredient labeling regulations that require the divulging of trade secrets. *Id.* at 28,912. *See* 21 C.F.R. § 720.8 (1988) (specifying procedure for exempting ingredients from public disclosure on trade secret grounds).

(3) Drugs. Sec. 502(e)(1) of the FD&C Act, which addresses disclosure of ingredients used to manufacture drugs, does not require disclosure of "inactive ingredients." *See* 21 U.S.C. § 352(e)(1). Such ingredients typically include binders, flavors, colors, preservatives and fillers. The FD&C Act requires the FDA to establish further exemptions from disclosure for active ingredients "to the extent that [disclosure] is impractical." *Ibid.*

Most of the ingredients added to tobacco in the manufacture of cigarettes are flavorings and fragrances. Such ingredients would be exempt from disclosure under Sec. 403 of the FD&C Act and Sec. 5(c)(3) of the FP&L Act or otherwise would qualify for exemption from disclosure on trade secret or impracticality grounds.

Mr. Chairman, you have been quoted as suggesting that cigarette manufacturers should be required to disclose tobacco additives because "Nabisco [must] provide the ingredients to Oreo cookies."[7] However, Nabisco is not required to disclose the flavorings, colorings and spices used in Oreos and is entitled to seek disclosure exemptions for other ingredients on trade secret or impracticality grounds. When you stated that "it is time to stop permitting the industry to treat additives to tobacco as trade secrets,"[8] you were asking, in effect, to apply to tobacco products a standard different in all relevant respects from the standard applied to foods, cosmetics and drugs.[9]

(b) Constituents. As in the case of tobacco additives, the provisions concerning tobacco smoke "constituents" are redundant. Pursuant to a voluntary agreement and program entered into with the Federal Trade Commission, the major cigarette manufacturers already disclose in their advertising "tar" and nicotine ratings for the advertised brands.[10] The Commission also publishes carbon monoxide ratings on a brand-by-brand basis, supplied by the cigarette manufacturers at the Commission's request.[11] The Tobacco Institute Testing Laboratory (TITL), monitored closely by an on-site representative of the Commission, measures the "tar," nicotine and carbon monoxide levels of cigarettes sold in the United States.

The Commission has told the House Subcommittee on Transportation, Tourism, and Hazardous Materials that it is satisfied that its current arrangement with TITL enables it to ensure the accuracy of the "tar," nicotine and carbon monoxide figures supplied by the cigarette manufacturers.[12] With respect to any other "constituents" of tobacco smoke, a representative of the Oak Ridge National Laboratory (ORNL) told the same Subcommittee in 1988, based on research conducted by ORNL, that testing for other constituents would not affect the relative ranking of cigarettes as determined by "tar" and nicotine or provide information that would affect a smoker's choice among the different brands of cigarettes that are available.[13]

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[7] *Chicago Tribune*, Nov. 16, 1989, p. 5.

[8] 135 Cong. Rec. S15,723 (daily ed. Nov. 15, 1989).

[9] Although S. 1883 would repeal Sec. 7(b)(2) of the Federal Cigarette Labeling and Advertising Act, which treats ingredient information as trade secret or confidential information and prohibits the unauthorized disclosure of such information, the bill does not purport to repeal Sec. 7(a), which requires cigarette manufacturers to provide the secretary annually with ingredient lists that do not "identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients." Thus, cigarette manufacturers conceivably would continue to be required to provide one ingredient list (which does not disclose brand or manufacturer information) to the secretary pursuant to Sec. 7(a) of the Labeling Act, and would be required to provide another list (which would disclose such information) to the Center under Sec. 953(a) of the new Title IX created by S. 1883.

[10] *See* Letter of October 23, 1970, to Federal Trade Commission from Brown & Williamson Tobacco Corporation, *et al.*

[11] *See, e.g.*, Federal Trade Commission, *Report of Tar, Nicotine and Carbon Monoxide Content of 272 Varieties of Domestic Cigarettes*, 54 Fed. Reg. 1787 (Jan. 17, 1989).

[12] *FTC Nicotine Program: Hearing before the Subcomm. on Transportation, Tourism, and Hazardous Materials of the House Comm. on Energy and Commerce*, 100th Cong., 1st Sess. 5-6 (1987) (statement of the Federal Trade Commission); *id.* at 10-11, 47 (testimony of William C. MacCleod, Director, Bureau of Consumer Protection, FTC); *id.* at 13, 47 (testimony of Daniel Oliver, Chairman, FTC).

There is no reason to enact legislation requiring further disclosure of tobacco smoke "constituents," for shifting responsibility for overseeing such disclosure to a new Federal agency or for incurring the substantial additional costs that such further oversight would entail.

(c) Anti-smoking campaigns. The Center would be directed to prepare and distribute anti-smoking materials, including "paid advertising campaigns to inform targeted populations . . . of the health effects of using tobacco products." Sec. 903(a) (1) and (2). Secs. 911-913 would direct the Center to make grants to public and private entities that would use the funds to conduct anti-smoking campaigns through public service announcements, paid advertising messages and "counter advertising." Sec. 911(b)(2). The Center also would be responsible for "coordinating with film makers, broadcast media managers, and others regarding the impact of media on tobacco use behavior." Sec. 903(a)(3).

Mr. Chairman, these provisions of S. 1883 appear to be based on the mistaken premise that Americans are unaware of the claimed health risks of smoking. In fact, as one authority told a House subcommittee not long ago, "the level of public awareness on smoking and health issues is virtually unprecedented in our national experience."[14] More Americans are aware of the allegations with respect to smoking and health than can identify George Washington or know when our Nation declared its Independence. Nearly every American believes smoking is harmful but only 1 of 3 Americans knows who delivered the Sermon on the Mount.[15]

Young people, especially, are aware of the risks attributed to smoking. As the surgeon general has stated, "[b]y the time they reach seventh grade, the vast majority of children believe smoking is dangerous to one's health."[16] Of 895 children and adolescents questioned in a recent survey, over 98 percent said they believed smoking is harmful and "accurately named one or more body parts that are adversely affected by smoking."[17] Young people start to smoke not because they are unaware of the claimed health risks of smoking or because of cigarette advertising. The only significant influences on smoking by young people are family and peers, and these influences have been shown to be both powerful and direct.[18]

When the anti-tobacco lobby complains that government spends "too little" on disseminating the anti-smoking message, it conveniently overlooks" the value of the "free media" that the anti-smoking message receives daily. Yet the Advocacy Institute—a prominent arm of the anti-tobacco lobby—has noted "the vast outpouring of media attention to smoking," and has commented that, "[b]y standards which apply to most running stories, coverage of smoking has enjoyed an extraordinary run in the media."[19] It would seem profligate, to say the least, in the face of the Federal budget deficit, for Congress to authorize an additional $50 million to promote a message that Americans already understand and believe and that is reinforced continually and pervasively by the news media.

I should add, in this connection, that we view with particular concern the provision of S. 1883 directing the Center to "coordinat[e] with film makers, broadcast media managers, and others regarding the impact of media on tobacco use behavior." Sec. 903(a)(3). It is not appropriate for government to tell artists, writers and others in the media how to portray smoking or smokers in their work, or to suggest that some portravals are more politically "correct" than others. It is one thing for government officials to speak out on an issue but quite another for the government to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."[69] Action by the Center pursuant to Sec. 903(a)(3) would chill expression protected by the First Amendment—effectively imposing a system of prior restraints on speech deemed to be insufficiently "unfriendly" to smoking.

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[13] *Cigarettes: Advertising, Testing and Liability: Hearings on H.R. 4543 before the Subcomm. on Transportation, Tourism, and Hazardous Materials of the House Comm. on Energy and Commerce,* 100th Cong., 2d Sess. 204 (1988) ("1988 Hearings") (statement of Michael D. Guerin). Dr. Guerin testified that the potential additional constituents of tobacco smoke are not, *per se,* harmful compounds. *Id.* at 211.

[14] See *1988 Hearings, supra* note 13, at 443 (statement of Gerald M. Goldhaber, Chairman, Department of Communications, State University of New York (Buffalo)).

[15] Id. at 442-43.

[16] *Smoking and Health: A Report of the Surgeon General,* p.17-10 (1979).

[17] Leventhal, *et al.,* "Is the Smoking Decision an 'Informed Choice'?", *JAMA,* vol. 257, pp. 3373-76 (1987).

[18] *See, e.g., Smoking Prevention Act: Hearings on H.R. 1824 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce,* 98th Cong., 1st Sess. 53 (1983) (statement of Mortimer B. Lipsett, M.D., Director, National Institute of Child Health and Human Development) ("The most forceful determinants of smoking [by young people] are parents, peers, and older siblings"); Aaro, Wold, Kannas & Rimpella, "Health Behaviour in School-children: A WHO Cross-National Survey," *Health Promotion,* vol. 1, no. 1, pp. 17, 21 (May 1986) ("When young people start smoking, the most important predictor is the smoking behaviour and smoking related activities of 'significant others'").

[19] *Media Strategies for Smoking Control: Guidelines,* p. 9 (Jan. 14-15, 1988).

(d) State programs. The Center would be directed to "provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products within the State to minors." Sec. 901(b)(5). Secs. 915-920 would direct the Center to make grants to States and political subdivisions of States to assist State and local efforts to prevent initial tobacco use by minors and encourage the cessation of tobacco use, especially by members of high-use groups. Sec. 915. States that enact and enforce laws prohibiting tobacco sales to minors and prohibiting cigarette vending machines except at locations where minors are not allowed would be rewarded with additional grants. Secs. 919 and 920.

Mr. Chairman, no one can seriously suggest that State and local governments need additional Federal encouragement in this area. Virtually every State prohibits the sale or distribution of tobacco products to minors and many State and local governments currently are considering a variety of measures to strengthen further existing laws in this regard. Moreover, during this decade, many State and local jurisdictions have enacted laws restricting smoking in public places and workplaces and implementing other anti-smoking measures. In his 1986 report, the surgeon general referred to "a wave of social action regulating tobacco smoking in public places."[70] Most recently, the surgeon general's 1989 report stated:

> "Since the 1986 Report, the pace of action appears to have increased in both the public and private sectors. Restrictions on smoking in public places are the result of government actions at the Federal, State, and local levels, particularly State and local legislation."[71]

In short, this is not a case in which Congress must bribe or coerce the States into pursuing Federal policy.

(e) Other programs. Secs. 921-925 would direct the Center to make grants to unions and other organizations to support activities, coordinated with employers, to "prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families, especially those individuals with the highest prevalence of tobacco use." Sec. 922. The bill also would direct the Secretary of Education to provide "incentive grants" to establish smoke-free schools. Sec. 926. With respect, we submit that additional Federal spending is not required to stimulate anti-smoking activity in these areas.

2. State and Local Regulation of Cigarette Advertising and Promotion. Sec. 955 would provide as follows:

> "Nothing in this subtitle, Section 5 of the Federal Cigarette Labeling and Advertising Act * * * or the Comprehensive Smokeless Tobacco Health Education Act * * * shall prevent any State or local government from enacting additional restrictions on the advertising, promotion, sale or distribution of tobacco products to persons under the age of 18, or on the placement or location of advertising for tobacco products that is displayed solely within the geographic area governed by the applicable State or local government, such as advertising on billboards or on transportation vehicles, as long as the restrictions are consistent with and no less restrictive than the requirements of this subtitle and Federal law."[72]

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[69] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

[70] *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*, p. 263 (1986).

[71] *Reducing the Health Consequences of Smoking: A Report of the Surgeon General*, p. 552 (1989).

[72] For purposes of Title IX, "advertisement" would mean—

"(A) all newspaper and magazine advertisements and advertising inserts, billboards, posters, signs, decals, banners, matchbook advertising, point-of-purchase display material (except price information), and all other printed or other material used for promoting the sale or consumption of tobacco products to consumers; and

(B) any other means used to promote the purchase of tobacco products." Subtitle E, Sec. 961(1).

For purposes of Title IX, "promotion" would mean—

"any marketing communication method that informs, persuades or reminds consumers of a tobacco product or the attributes, image or brand name of such product or [sic] motivates consumers to sample or try that product." Subtitle E, Sec. 961(11).

It is unclear what this provision would accomplish. The first part of Sec. 955 likely would be invoked by anti-smoking advocates at the State and local levels in an attempt to justify sweeping restrictions on the advertising, promotion, sale and distribution of tobacco products in the name of reducing smoking by young people. This could result in an end run around Congress' consistent policy of national uniformity in this area. Moreover, by arguably licensing State and local measures that would render cigarette advertising and perhaps cigarettes themselves invisible to young people, this part of Sec. 955 would fly in the face of the U.S. Supreme Court's repeated admonition that "the government may not 'reduce the adult population . . . to reading only what is [deemed] fit for children.'" [24]68[24] *Bolger v. Youngs Drug Product Corp.*, 463 U.S. 60, 73 (1983) (quoting *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (invalidating statute that prohibited reading materials deemed inappropriate for children)). *See also Health Protection Act of 1987: Hearing on H.R. 1272 and H.R. 1532 before the Subcomm. on Transportation, Tourism & Hazardous Materials of the House Comm. on Energy and Commerce*, 100th Cong., 1st Sess. 99 (1987) (testimony of Professor Burt Neuborne, New York University Law School).

The second part of Sec. 955—authorizing State and local restrictions on the placement or location of advertising displayed solely within the jurisdiction involved—could Balkanize regulation of the advertising and promotion of a nationally marketed product. Such an outcome would be seriously at odds with First Amendment values. In addition, anti-smoking advocates undoubtedly would attempt to use S. 1883 to justify prohibitive State and local advertising requirements, or even outright bans. For all of these reasons, similar legislation in the House has been opposed in the last two Congresses by the American Civil Liberties Union, the Washington Legal Foundation, the Freedom To Advertise Coalition, the Association of National Advertisers and the American Association of Advertising Agencies, among others.[25] We oppose this provision of S. 1883 for the same reasons. There is no reason to retreat from Congress's consistent 25-year policy of national uniformity in this field.

3. An "Addiction" Warning. Section 10(b) of S. 1883 would replace the surgeon general's carbon monoxide warning with the following warning: "SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop."

Mr. Chairman, this issue was the subject of a hearing in 1988 before the House Subcommittee on Health and the Environment. At that hearing, we testified against an addiction warning on the ground that calling cigarette smoking an "addiction" trivializes, and almost mocks, the serious narcotic and other hard drug problems faced by our society and undermines efforts to combat drug abuse.[26] In addition, we noted that the "addiction" claim with respect to smoking is without medical or scientific foundation, notwithstanding the comments of former Surgeon General Koop. Such a claim defies all logic when, according to the surgeon general, nearly half of all Americans who ever smoked have quit,[27] and most of the 41 million smokers who quit did so without formal treatment programs or smoking cessation device.[28] Ironically, the presence of an "addiction" warning could serve to discourage some smokers from quitting.

Rather than repeat my testimony from that hearing, I respectfully request that my testimony and the supporting testimony of Dr. Stephen M. Raffle and Dr. Theodore H. Blau, be included in the record of this hearing.[29]

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[25] *Tobacco Issues (Part 1): Hearing on H.R. 1250 before the Subcomm. on Transportation and Hazardous Materials of the House Comm. on Energy and Commerce*, 101st Cong., 1st Sess. (1989); *1989 Hearings*, supra note 13.

[26] Secs. 6 and 7 of S. 1883, which would amend the Drug-Free Schools and Communities Act of 1986 and the Anti-Drug Abuse Act of 1988 to cover tobacco products, suffers from the same defect. These provisions of S. 1883 would divert the limited funds appropriated under these acts to anti-tobacco programs without appropriating any additional funds for such programs.

[27] *1989 Report*, supra note 22, at 292.

[28] *The Health Consequences of Smoking—Nicotine Addiction: A Report of the Surgeon General* p. 466 (1988). *See also id.* at 577, 580-81 (trends in quitting activity).

[29] *Health Consequences of Smoking—Nicotine Addiction: Hearing before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 100th Cong., 2d Sess. 20-21 (1988).

[30] The materials being submitted with this statement are as follows: (a) The Code of the Smokeless Tobacco Industry; (b) ". . . a continuing commitment"; (c) "Because we care . . . "; (d) "Taking Our Responsibility Seriously . . . "; (e) "Common Values, Common Programs"—Remarks by Michael J. Kerrigan to the American Legion Commission on Children and Youth, May 8, 1989; and (f) Examples of paid public service announcements.

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At some point, Mr. Chairman, any industry faced with the prospect of still further regulation is entitled to say "enough." We clearly have reached that point with the regulation of tobacco products. S. 1883, which proposes regulation that is not needed and spending the Federal Government can ill afford, should be rejected.

I would be glad to answer any questions.

The **Chairman**. We will recognize Mr. Boggs now. We are delighted to welcome you to the committee.

Mr. **Boggs**. Thank you, Mr. Chairman, Senator Dodd.

My name is Tom Boggs. I am a partner in the law firm of Patton, Boggs and Blow, and I am accompanied this morning by Ray O'Hare, of the same firm.

We are here today representing the Freedom to Advertise Coalition. The Coalition members include the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers, the Magazine Publishers Association, the Outdoor Advertising Association of America, and the Point of Purchase Advertising Institute.

Before turning to an analysis of S. 1883, I should point out that many organizations involved with advertising and the First Amendment have expressed concern about the bill, including the American Civil Liberties Union, the Washington Legal Foundation, and the Advertising Leadership Council.

Yet until our Coalition met with the chairman's staff just last week, we were told that no one from the advertising community would be permitted to testify.

This short oral testimony cannot possibly fully air all of the potential negative impacts the bill could have on commercial speech. We therefore request permission to submit more detailed comments for the hearing record, including comments from constitutional experts.

Is that all right, Mr. Chairman?

Senator Dodd [presiding]. Yes. Without objection, so ordered.

[Information referred to above follows at the end of the hearing.]

Mr. **Boggs**. By drastically weakening the existing Federal preemption over State and local regulation of tobacco advertising, section 955 of the bill would open the door for States and localities to prohibit local advertising, such as that placed on billboards, transit vehicles, and perhaps other locations such as point of purchase.

Moreover, in the name of protecting children, this section would permit State and local governments to enact other severe and potentially diverse restrictions as to create a de facto ban on all multi-state tobacco advertising.

One of the two substantive clauses of section 955 would permit States and localities to place restrictions on tobacco advertising that is displayed solely in the geographic area governed by the applicable State or local government, such as advertising on billboards or on transit vehicles. This would encourage States to unconstitutionally restrict local advertising.

The courts have permitted localities to restrict all billboards in certain geographic areas. These restrictions are imposed because of the location of the advertising, not the message.

Section 955 in contrast would permit States or localities to ban local advertising because of what it says—a result at odds with the First Amendment.

Moreover, the other substantive clause of the section goes beyond local advertising to invite State or local governments—and by the way, there is no definition of local governments, and there are 6,700 taxing jurisdictions in the United States, so I assume it includes all of them—to restrict advertising of tobacco products to persons under the age of 18. This language would permit States to seek to restrict any advertising which could be seen or heard by children, effectively banning advertising of tobacco products in the name of protecting children.

Even if this reading of the language is too broad, section 955 might permit State control over content or location of tobacco advertising, such as prohibitions on importation into a State of magazines or newspapers containing tobacco advertising with certain imagery or prohibition of tobacco advertising in certain magazines.

Perhaps more importantly, each State most certainly would apply the language differently. The crazy quilt of regulations which would result could Balkanize the regulatory structure in such ways as to amount to a de facto ban on multi-state advertising of tobacco products.

The First Amendment protects commercial speech, which concerns a lawful activity, which is not inherently misleading. Protected commercial speech may be only restricted by regulation which is narrowly tailored to directly advance a substantial governmental interest. Proponents of restrictions on tobacco advertisements have not demonstrated that such restrictions will reduce demand for tobacco products with substantial government interest.

Indeed, as Mr. Whitley pointed out, Dr. Everett Koop as recently as 1989 reaffirmed that there is no rigorous scientific evidence to that effect.

Moreover, by abdicating its responsibility and giving the States license to censor tobacco advertising as they please, Congress' action would not be "narrowly tailored" to meet the U.S. Supreme Court test.

The censorship permitted by section 955 is cloaked with the noble clause of "protecting children." However, the U.S. Supreme Court has held that the government may not reduce the adult population to read only what is fit for children. The level of discourse, the court has stated, "simply cannot be limited to that which would be suitable for a sandbox." That same principle was just reaffirmed by the U.S. Supreme Court in June of 1989.

Although S. 1883 would not directly impose restriction on commercial speech, it would invite the States to do so. As the ACLU has commented on a previous bill which would have repealed the tobacco advertising preemption, "Where the effect of a statute is to impede the interstate flow of information, protected by the First Amendment, there is cause for alarm. By essentially delegating to the States the authority to require new forms of advertising, the effect of the legislation is to invite an unconstitutional result."

When evaluating First Amendment implications, the U.S. Supreme Court and constitutional jurisprudence demands that a law must be tested by its operation and effects. The effect of S. 1883 would be to invite States to create restrictions on advertising which would violate the First Amendment. Moreover, even if individual States or localities enacted restrictions which could be upheld individually against a constitutional challenge, the aggregate effect of all of those provisions could create a de facto ban of advertising.

Over a period of 25 years, Congress has developed a comprehensive, uniform scheme for the regulation of tobacco advertising. The legislative history of the Federal Cigarette Labelling and Advertising Act is full of references to the need for uniformity in order to make the Federal scheme effective.

Congress has decided that tobacco is a unique product. It imposed a warning label requirement, and banned tobacco advertisement from television and radio. Proponents of advertising restrictions have not shown that the Federal regulatory scheme is not working. In part because of the health warnings displayed in advertisements, Americans now understand the risks involved in smoking.

S. 1883 reflects a continuing concern with the health warning system by replacing one cigarette warning with a new message. Yet section 955 would invite States to restrict or ban tobacco advertising, and by so doing, suppress the very health message Congress hopes to convey.

Although the proposed section 955 constitutes only one small portion of S. 1883, it is the offensive and objectional provision for the advertising industry. The Freedom to Advertise Coalition asks that this unconstitutional and unsound paragraph be deleted from the bill. If more education is required, Mr. Chairman—and that seems to be the purport of the bill—what is needed is more speech, not less speech.

And I might say just as a matter of tactics, Mr. Chairman, this one paragraph will probably engender the opposition of numerous groups in this country from the American Civil Liberties Union to the Washington Legal Foundation, going the spectrum from the right to the left. It will also engender the opposition of almost all the major advertising entities in the country. Without this provision, I don't think you would have that opposition to this bill. So I think in terms of moving the bill and the legislation along, simply the deletion of the advertising provision would go a long way.

Thank you, sir.

[The prepared statement of Mr. Boggs follows:]

Prepared Statement of Tom Boggs

My name is Tom Boggs and I represent the Freedom to Advertise Coalition. The Coalition was formed in 1987 out of concern for the right to truthfully and nondeceptively advertise all legal products—a right protected by the First Amendment. The Coalition's members include the American Advertising Federation, the American Association of Advertising Agencies, the Association of National Advertisers, the Magazine Publishers Association, the Outdoor Advertising Association of America, and the Point of Purchase Advertising Institute.

Before turning to an analysis of S. 1883, I must request that the committee not act on this bill until further consideration is given to its potential effect—particularly the provisions related to advertising. Many organizations involved with advertising and the First Amendment have expressed concern about the bill including the American Civil Liberties Union and the Washington Legal Foundation. Yet, until our Coalition met with the chairman's staff just last week, we were told that no one from the advertising community would be permitted to testify. The few days we were given to prepare, and this short oral testimony, cannot possibly fully air all the potential negative impacts the bill could have on commercial speech. We request permission to submit more detailed comments for the hearing record within the next 15 days including comments from constitutional experts. Moreover, the Federal Trade Commission, the agency responsible for the regulation of advertising, should be consulted. Finally, if advertising provisions remain in the bill the Senate Committee on Commerce, Science and Transportation, which has jurisdiction over advertising issues and which created the Federal tobacco advertising regulatory structure, should receive sequential referral of the bill.

By drastically weakening the existing Federal preemption over State and local regulation of tobacco advertising, Section 955 of the Public Health Services Act, which would be created by S. 1883, would open the door for States and localities to prohibit "local" advertising such as that placed on billboards, transit vehicles, and perhaps other locations such as the point-of-purchase. Moreover, in the name of protecting children, this anti-preemption section could permit States and local governments to enact other such severe and potentially diverse restrictions as to create a de facto ban on all multi-state tobacco advertising as well. The anti-preemption language contained in Section 955 would destroy a carefully constructed, uniform Federal structure for the regulation of tobacco marketing. Section 955 would also exacerbate the growing trend toward the proliferation of advertising restrictions for many legal products and services. The Freedom to Advertise Coalition opposes this constitutionally infirm and unwise proposal.

One of the two substantive clauses of Section 955 would permit States and localities to place restrictions on tobacco advertising that is "displayed solely within the geographic area governed by the applicable State or local government, such as advertising on billboards or on transit vehicles." The Coalition opposes this provision because it would encourage States to unconstitutionally restrict "local" advertising. Although the courts have permitted localities to restrict all billboards in certain geographic areas, these restrictions are imposed because of the location of the advertising rather than the message. Section 955, in contrast, would permit States or localities to ban "local" advertising because of what it says—a result at odds with the First Amendment. If billboards are a significant local problem, existing Federal law allows localities to restrict them without regard to their content.

Moreover, the other substantive clause of the section goes beyond "local" advertising to invite State or local governments to restrict "advertising . . . of tobacco products to persons under the age of 18." This ambiguous language could permit States to seek to restrict any advertising which could be seen or heard by children. In other words, Section 955 could permit States to accomplish through the back door what others have not been able to do through the front door of Federal legislation: effectively ban all advertising of tobacco products in the name of protecting children.

Even if this reading of the language is too broad, section 955 might still permit State control over content or location of tobacco advertisements, such as prohibitions on the importation into a State of magazines or newspapers containing tobacco advertisements with certain imagery, or prohibition of tobacco advertising in certain magazines. Perhaps more importantly, each State most certainly would apply the language differently. The crazy quilt of regulations which would result could Balkanize the regulatory structure in such ways as to amount to a de facto ban on multi-state advertising of tobacco products.

It is important to note that little or no tobacco advertising is truly local in nature. National tobacco brand marketers develop billboard and point-of-purchase designs for distribution throughout the United States. Thus, even if the ambiguous clause referenced above were stricken from the section, the "local" advertising clause would still permit States and localities to restrict interstate commerce in tobacco advertising.

The First Amendment protects commercial speech, like tobacco advertising, which concerns a lawful activity and which is not inherently misleading. Protected commercial speech may only be restricted by a regulation which is narrowly tailored to directly advance a substantial governmental interest.

Proponents of restrictions on tobacco advertisements have not demonstrated that such restrictions will reduce demand for tobacco products. Indeed, C. Everett Koop, former surgeon general, admitted in a 1989 report, that "[t]here is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption." Thus, without strong new evidence the Government cannot meet its burden of proof of demonstrating the restrictions on tobacco advertising would "directly advance" any substantial governmental interest. Moreover, by abdicating its responsibility and giving the States license to censor tobacco advertising as they please, Congress' action would not be "narrowly tailored."

The censorship permitted by Section 955 is cloaked with the noble cause of protecting children. However, the U.S. Supreme Court has held that government may not "reduce the adult population . . . to reading only what is fit for children." "The level of discourse," the Court has stated, "simply cannot be limited to that which would be suitable for a sandbox."

Although S. 1883 would not directly impose restrictions on commercial speech, it would invite the States to do so. As the ACLU has commented on a previous bill which would have repealed the tobacco advertising preemption:

> Where the effect of a statute is to impede the interstate flow of information protected by the First Amendment, there is cause for alarm. By essentially delegating to the States the authority to require new forms or advertising copy, the effect of the legislation is to invite an unconstitutional result.

When evaluating First Amendment implications, Supreme Court constitutional jurisprudence demands that a law must be tested by its operation and effect. The effect of S. 1883 would be to invite States to create restrictions on advertising which would violate the First Amendment. Moreover, even if individual States or localities enacted restrictions which could be upheld individually against a constitutional challenge, the aggregate effect of all of those provisions could create a de facto ban.

It is disingenuous to argue, as some have, that the anti-preemption language would simply put tobacco in the same position as every other product. Over a period of 25 years, Congress has developed a tough, comprehensive, uniform scheme for the regulation of tobacco advertising. The legislative history of the Federal Cigarette Labeling and Advertising Act is full of references to the need for uniformity in order to make the Federal scheme effective. Congress has decided that tobacco is a unique product. It imposed a warning label requirement and banned tobacco advertisements from television and radio. It created Federal preemption to ensure that Congress would decide what kind of information would be available.

Proponents of advertising restrictions have not shown that the Federal regulatory scheme is not working. In part because of the health warnings displayed in advertisements, Americans now understand the risks involved in smoking. For example, by 1986 92 percent of adults believed that cigarette smoking is a cause of lung cancer. Moreover, smoking has declined. The surgeon general reports that the prevalence of smoking by adults dropped from 40 to 29 percent between 1965 and 1987.

S. 1883 reflects a continuing concern with the health warning system by replacing one cigarette warning with a new message. Yet, Section 955 would invite States to restrict or ban tobacco advertising and, by so doing, to suppress the very health message Congress hopes to convey.

The license to censor tobacco advertisements which Section 955 provides to the States could trigger State activity which would use the tobacco experience as a dangerous precedent to restrict advertising for automobiles, non-prescription drugs or political messages. Thus, the impact of Section 955 could go well beyond tobacco. Constitutional rights are fragile. Once cut back, such rights are difficult to restore.

Although the proposed Section 955 constitutes only one small portion of S. 1883, it is the offensive and objectionable provision for the advertising industry. The Freedom to Advertise Coalition asks that this unconstitutional and unsound paragraph be deleted from the bill.

The CHAIRMAN. Thank you very much, Mr. Boggs.

Mr. Whitley, the tobacco industry maintains that it is already regulated. I think we should also remember that cigarettes are the only product whose advertising the States are prohibited from regulating.

In testimony delivered in 1982 at a hearing on the House side, Mr. Horrigan, at the time the CEO of R.J. Reynolds and Executive Committee Chair of The Tobacco Institute, testified that each member company "still adheres to the principles of the industry's cigarette advertising code adopted in 1964, and he submitted a summary of those principles, which I will read from."

One of them is: "No one depicted in cigarette advertising shall be or appear to be under 25 years of age." You saw the toddler-size t-shirts displayed by Dr. Blum before and the material on the videotape showing young teenagers involved in the advertising and promotional events. Is the industry adhering to its own code?

Mr. WHITLEY. Yes, we think we have, Senator. That merchandise that was displayed over there does not depict any sort of a model under 25 years of age—and obviously, a toddler is not going to buy that product. If it is bought, it is going to be bought by an adult.

The CHAIRMAN. Why? I have trouble following that, why a young person cannot purchase it, why it has to be limited just to an adult.

Mr. WHITLEY. Well, I think what he showed was a tiny little t-shirt for a baby or a toddler, and certainly someone that age is not going to buy it.

The CHAIRMAN. Well, your statement is that all those who are involved in advertising, all of the models and all the rest, are over 25 years of age?

Mr. WHITLEY. They are if the advertising agencies are adhering to the specific written instructions that they receive and which they agree to in preparing advertisements.

The CHAIRMAN. Well, that's what I'm asking you—are they doing it, or aren't they doing it?

Mr. WHITLEY. We say they are, yes.

The CHAIRMAN. Well, all of them are, then?

Mr. WHITLEY. Yes, yes.

The CHAIRMAN. I want to find out in the testimony now. Each one of the major companies now are not using any models under 25 years of age.

Mr. WHITLEY. Unless it is being done without the knowledge and consent of the company.

The CHAIRMAN. Without the knowledge or consent of the company. Any one of those companies will say that they are not.

Mr. WHITLEY. That's correct.

The CHAIRMAN. OK. Then another principle: "Cigarette advertising shall not depict as a smoker anyone who has been well-known as an athlete"——

Mr. WHITLEY. That's right.

The CHAIRMAN [continuing.] "Nor shall it show any smoker participating in or obviously just having participated in a physical activity requiring stamina or athletic conditioning beyond that of normal recreation."

Now, did the videotape you saw earlier show any individuals participating in physical activities requiring stamina?

Mr. WHITLEY. Well, if you are talking about race car drivers, Mr. Chairman, it certainly didn't show any of those people smoking. And they are wearing so many labels all over those coveralls that you've got to really be looking to pick out the names of cigarettes.

The CHAIRMAN. So, you are indicating now that all of the companies that are advertising are continuing living up to that particular principle.

Mr. WHITLEY. Yes, yes.

The CHAIRMAN. All of them are.

Mr. WHITLEY. Yes.

The CHAIRMAN. Here is an advertisement for "Virginia Slims Tennis Courts the Best", then you have the advertising for Virginia Slims; then you have the logo, which shows women's tennis, with a tennis player sitting down with a tennis racquet in one hand and a cigarette in the other. That doesn't——

Mr. WHITLEY. No, it doesn't. If you'll read again the provision of the code that you just read, I think you will see that that person is not depicted as having unusual skills or anything beyond the ordinary tennis player.

The **Chairman**. Well, I don't know how she would react to that particular suggestion. [Laughter.]

Mr. **Whitley**. Who is the tennis player involved, Mr. Chairman? I have not seen that, Mr. Chairman.

The **Chairman**. Well, it is a big ad in *USA Today*, Friday, February 9.

Mr. **Whitley**. I understand that. But is the individual depicted a prominent person or a professional athlete or anything of that nature? I haven't seen it.

The **Chairman**. Well, I can read the list of the prominent tennis players that are in it——

Mr. **Whitley**. I mean the picture to which you referred, Senator.

The **Chairman**. Well—Steffi Graff, Sabatini, Navratilova, Garrison——

Mr. **Whitley**. Are they pictured holding cigarettes, Mr. Chairman?

The **Chairman**. No, not individually, but they are all with their racquets, holding them, and right next to them is another person with a racquet, with a cigarette. You could draw certain distinctions——

Mr. **Whitley**. Is that a list of the participants in the tournament, Mr. Chairman?

The **Chairman**. Yes, allegedly. I mean, this is *USA Today*. I don't think it is any mystery. I'm glad to let you have my copy.

Mr. **Whitley**. I'm sure, but it just came out this morning, Senator, and I haven't seen it. You have the advantage——

The **Chairman**. It isn't this morning. It is February 9.

Mr. **Whitley**. We take the position that that does not violate the code.

The **Chairman**. OK. Another principle States that "Cigarette advertising shall not suggest that smoking is essential to social prominence, distinction or sexual attraction, nor shall it picture persons smoking in an exaggerated manner."

Mr. **Whitley**. Yes, we adhere to that.

The **Chairman**. In 1971, after the television and radio advertising bans, Mr. Joseph F. Cullman III, of The Tobacco Institute, said in an interview on "Face the Nation": "We volunteered to go off the air. We plan to be off the air. We agree to do this. The law provides it. We plan to adhere to the spirit and the letter of the law. We are not going to advertise cigarettes on the air."

Now, Dr. Blum showed earlier how many cigarette logos can be shown during a sporting event—far more than the industry might choose to buy time for. Do you contend that the broadcasting of these promotional events adheres to the spirit of the electronic broadcast ban passed by Congress in 1969?

Mr. **Whitley**. Absolutely. There is no message there.

The **Chairman**. Pardon me?

Mr. **Whitley**. There is no message there which is designed to sell cigarettes. Whatever is there at the arena and is televised at the arena is a display ad for that purpose, but it is not a bought, paid-for television commercial. That's what we're talking about.

The CHAIRMAN. We understand that it is not bought, paid-for television, but you also indicated that the spokesman for the industry said: We agree with this. The law provides it. We plan to adhere to the spirit as well as the letter. Do you think that that was adhering to the spirit?

Mr. WHITLEY. Well, those events are not just television events, Mr. Chairman. Those events are staged for thousands and thousands of people who attend them, and that advertising is designed to attract them. It is not done in a television studio. That is not a television program.

The CHAIRMAN. Despite the Federal preemption on the regulation of advertising, four cities, including Boston, have limited outdoor advertising of tobacco. The State of Utah has banned all tobacco billboards in the State. Why hasn't the tobacco industry challenged this in court.

Mr. WHITLEY. Well so far, Mr. Chairman, there has been very little of that that has been done and where it has been done, it has been implemented on a very slow basis, and I would suppose that the industry is just watching developments.

Mr. BOGGS. In the case of Utah, Mr. Chairman, their statute preceded the Federal preemption provisions.

The CHAIRMAN. What about the others? Boston certainly was afterwards. Do you intend to challenge those?

Mr. WHITLEY. I cannot give you a categorical answer to that, Mr. Chairman; we have not as yet, as you know.

The CHAIRMAN. Well, I just do not understand, if you are not challenging it, why you object so strenuously to permitting it. You have not challenged it yet. Are you prepared, as a spokesman for the industry, to claim that it is illegal.

Mr. WHITLEY. I am prepared to claim that it is illegal. I do not question for a minute that——

The CHAIRMAN. But you are just not going to do anything about it——

Mr. WHITLEY [continuing.] That the activity prohibited by the Boston ordinance is contrary to the Federal preemption. I just said that we had not yet arrived at a decision as to when or whether it is going to be challenged in court. Clearly it is illegal, as is the law in Utah.

The CHAIRMAN. You contend that to reveal additives is to reveal trade secrets, yet the companies who market well-known foods or cosmetics seem to find no problem with revealing their additives.

Mr. WHITLEY. Yes, but, Mr. Chairman, you give them an exemption for flavorings, spices, color and——

The CHAIRMAN. Well, if we give you the same exemption, will you sign on?

Mr. WHITLEY. Well, certainly the—we already provide——

The CHAIRMAN. Wait a minute, wait a minute. Did you say, well certainly?

Mr. WHITLEY. No. I said we are already providing a list of ingredients, and it is already being examined, it is already being looked at. And if you start making the kind of thing that you are talking about available to everybody, then you get into proprietary information.

The Chairman. You mean making it available on the cigarettes packs or in the packs, giving the people the right to know what kind of additives have been put in—say we exclude the flavoring, spices and fragrances that you just mentioned. You do not think the public is entitled to know there are cancer causing agents that are in those cigarettes?

Mr. Whitley. Well, if the Secretary of HHS makes a determination that there are cancer causing ingredients added to tobacco to produce cigarettes, I am sure that he will very quickly notify both the public and the Congress to that effect and that appropriate steps will be taken. Information is already there, Mr. Chairman.

The Chairman. In this list here that is provided, all it does is list the various chemicals. It goes on with list after list on this. I understand, there are scores of these that are considered to be cancer causing agents.

Mr. Whitley. Well, I do not share your knowledge. I have not seen the list, Mr. Chairman. But again, the secretary has it. He has requested more specific quantitative information and that is forthcoming.

The Chairman. Is your testimony here now, speaking for the industry, that there are no cancer causing additives that are included in the manufacturing of cigarettes?

Mr. Whitley. Mr. Chairman, we contend categorically and without any equivocation at all that there are no additives in cigarettes in the quantities that would produce any harmful effects whatsoever.

The Chairman. Why not let the chief public health officer make that decision rather than having that judgment made by the industry?

Mr. Whitley. He is doing it right now, Mr. Chairman. He is doing that with the information that is provided.

The Chairman. Well, you heard him, if you were in here, saying that that information is virtually useless to make that determination.

Mr. Whitley. But he also said he had——

The Chairman. Because——

Mr. Whitley. Excuse me.

The Chairman. Because of the way it is characterized in here——

Mr. Whitley. But he also said——

The Chairman [continuing.] Virtually useless.

Mr. Whitley [continuing.] That he had asked for quantitative information, and I am telling you that that is forthcoming, as is any other information that he says he needs to make that determination.

The Chairman. It is interesting that it was done 5 days ago.

Mr. Whitley. Well, he made the request, and we responded to it——

The Chairman. No one is questioning Dr. Sullivan, but it is interesting that—well, do you have any reason that we should not have access to the response of Dr. Sullivan, if——

Mr. Whitley. We would be delighted to give you a copy of Dr. Sullivan's letter and our response.

The **Chairman**. Let me just move over to Mr. Boggs. The 1969 Amendments say it shall be unlawful to advertise cigarettes on any medium of electronic communication. You saw the examples of the promotional sporting events on TV. Do you think the tobacco advertisers are adhering to the letter?

Mr. **Boggs**. To the letter of the law, Mr. Chairman?

The **Chairman**. Yes.

Mr. **Boggs**. I think they are. I think that the law is written——

The **Chairman**. As well as the spirit?

Mr. **Boggs**. I am not sure what the spirit of the law was at the time. But the law is very unclear as to what constitutes advertising. For example, the promotional materials that the doctor showed, the t-shirts and the hats, that has not been considered advertising until very recently when the Courts of Appeals decision in the District of Columbia did hold that some of those materials were advertising materials. So the standard logo or the standard name just placed in a location has not necessarily been considered advertising requiring a warning label, for example.

The **Chairman**. You know, one of the difficulties I have, Mr. Boggs, with your excellent presentation, is about what is a political subdivision, a governmental subdivision, State or local. You know, people up in my part of the country—you are familiar with Massachusetts——

Mr. **Boggs**. Yes, sir.

The **Chairman** [continuing.] They understand that. We have got a number of counties that are dry up there. They cannot advertise alcoholic beverages in Arlington, MA, or Vineyard Haven, because it is dry. And it works up there. People are happy with the way it works.

Mr. **Boggs**. You mean they cannot advertise alcohol?

The **Chairman**. That is correct, yes.

Mr. **Boggs**. Well, there was a constitutional amendment on alcohol, Mr. Chairman.

The **Chairman**. Just following your logic or reasoning about how repealing the advertising preemption would create a patchwork quilt of different regulations. My State has different regulations in a number of different counties, and it works up there. People say to me, you can do it with alcohol; why in the world can't you do it with cigarettes? If different communities want to have that kind of protection, why not permit them to?

Mr. **Boggs**. First of all, I would suggest that if you take a look at this last week's Sports Illustrated magazine, for example, I assume that everybody in the localities you are talking about probably receive copies of those magazines if they were subscribers or bought it on a newsstand, they certainly had numerous advertisements in that issue of the magazine. I happened to read it because it is the issue that has the annual swimsuit edition, and it has numerous advertisers for alcoholic products. So certainly there is no ban in that locality in Massachusetts on a nationwide advertising campaign by, say, Tanqueray gin. If you had 6,700 localities with provisions like the one in Massachusetts and the localities started enforcing those provisions, then you could not have an ad in that magazine, which was a standard ad which you showed all across the country.

The CHAIRMAN. First of all, I would think that there is a certain arrogance in insisting that people in those local communities are going to pass unconstitutional acts.

Mr. BOGGS. No, no——

The CHAIRMAN. No, no, just wait a second.

And that is what is suggested throughout your presentation on this. If we let people in the local communities take action, which they did in Boston, with regard to limiting or prohibiting billboard advertising, sure they are still going to be able to get Sports Illustrated down there. But they think that those limitations can have some beneficial impact. And you have got a number of other communities that say we also can have some impact. We do not want those ads near the schools where our kids go or near the places where they play. And they can make that judgment. And your response is, well, they can still read Sports Illustrated, so we are not going to permit them to take any step at all.

Mr. BOGGS. No, no. My response, Mr. Chairman, is, first of all, part of your bill aimed at children may well prohibit the Sports Illustrated as well as the transit ad. It is unclear really as to whether your bill does that or does not do that. If you read it literally and you did not have U.S. Supreme Court decisions about the sandbox and children, I think you could interpret it would be very impossible to have a national campaign of any sort that was not in some way aimed at children. So you probably could not have a national campaign.

I am not saying that localities would necessarily enact unconstitutional provisions. I am saying that they could all enact constitutional provisions. You put them all together, it will basically make it impossible to have free speech about that product, because it is just impossible to comply with that many different and very odd regulations.

The CHAIRMAN. Well, there is no advertising prohibition on newspapers.

Let me go into this other issue. To your knowledge, has the cigarette companies ever asked an advertising agency to be careful in designing a promotion campaign not to recruit new smokers?

Mr. BOGGS. I do not know, Mr. Chairman. The people to really ask about that would be the American Association of Advertising Agencies. That is one of the groups that we do represent today. They would be delighted to come and testify. They asked to testify and have not yet been allowed to testify.

The CHAIRMAN. Do you think that their advertising does recruit new smokers yourself?

Mr. BOGGS. Recruit new smokers?

The CHAIRMAN. Yes.

Mr. BOGGS. You mean a personal opinion?

The CHAIRMAN. Yes.

Mr. BOGGS. My personal opinion is just a personal opinion. I think that most people really know that tobacco is bad for you. I think that what advertising does is bring you to one brand or another. It is my understanding that if you change the market 1 percent of a brand of advertising, it is five hundred and some million dollars to the company. So, there is a huge amount of competition to try to get a 1 percent difference of market share.

The **Chairman**. Do you think the advertising does recruit new smokers?

Mr. **Boggs**. I just do not know. I really do not know. I smoke without it. I wish I did not.

The **Chairman**. Do you think advertising could prevent people from starting to smoke?

Mr. **Boggs**. I think clearly that more speech and more information is very effective in terms of preventing people from smoking. I think that that is what you ought to be concentrating on.

The **Chairman**. I think you indicated that you wanted to submit some testimony for the record within the 15 days. We would be glad to place it in the record.

Mr. **Boggs**. What we would like, Mr. Chairman, is to have a couple of constitutional experts do a really decent piece on the free speech issue.

The **Chairman**. Before yielding to Senator Dodd, I would like to clarify for the record the language of the provisions which you are concerned about, the section 955 provisions, that would enable State and local governments to enact additional restrictions on the advertising, promotion, sale or distribution of tobacco products to persons under the age of eighteen and on the placement or location of advertising for tobacco products displayed within its geographic area. Nowhere in the provision does it empower States or localities to enact legislation in violation of the Constitution.

If you want to add to that particular provision that we are not going to permit any statute that does not meet the constitutional requirements, I certainly have no objections to that.

Mr. **Boggs**. Mr. Chairman, I think that that will be very helpful. I think that would be something worth adding to the bill.

I think that either you have a different version than I have, you read an "and" on the placement or location of advertising. I have a version with "or" on the placement or location of advertising for tobacco products.

I think there are two tests, not one.

The **Chairman**. If you look at the one that has been introduced, it is the one I referred to.

Mr. **Boggs**. It is now "and"?

The **Chairman**. That is correct. Yes, that is the way it has been introduced.

Senator Dodd.

Senator **Dodd**. Thank you, Mr. Chairman.

Charlie, it is a pleasure to see you again. I think we were elected in the same year. I am getting white hair. You had white hair back then.

Mr. **Whitley**. That is right.

Senator **Dodd**. Let me ask you, if you can, to go back and take a review with me on the 1964 voluntary self-regulation of the tobacco industry. That was the year that the industry established its own cigarette advertising code. I wonder if you might share with the committee what the major tenets of that code were and in your estimation how well and how effective that code has worked over the last 20-odd, 25 years, and does the industry adhere fully to the code in your estimation.

Mr. Whitley. Essentially what that code did was to say the industry will no longer advertise, for example, on college campuses or in any kind of publications that are designed primarily for young people such as college newspapers or Seventeen magazine, that sort of thing. The accompanying sampling code provided that there would be no sampling of cigarettes to minors or any sampling at areas that were close to concentrations of young people, that in the sampling of cigarettes, passing out of samples, that people would be, those who did the actual passing out would be carefully instructed to ascertain that the person, (1) was a smoker and, (2) was 21 years of age. And if they had any doubt, either not to give the sample to the individual or to require some sort of identification. That has been done as a part of the sampling code.

As the Senator pointed out, we do not use athletes, well-known athletes either active or retired. We do not show people who have just engaged in or are about to engage in strenuous physical activity as smoking. We do not show people smoking in some kind of an exaggerated manner. Those are the basic tenets of the code. I do not have it in front of me, Senator, but essentially that is what it provides for.

The next part of your question was, how has it worked?

Senator Dodd. Let me ask you a question on the first part.

Mr. Whitley. All right.

Senator Dodd. The rationale for that voluntary code, is it fair to draw the conclusion, was because to do that is apt to promote cigarette smoking on the part of younger people, or was there some different rationale?

Mr. Whitley. The purpose was to avoid any appearance even of advertising to young people or even doing it to the extent that it might have been done prior to that time such as sampling on college campuses or advertising in college newspapers and things of that nature.

Senator Dodd. But it was the conclusion of the industry that that was not the case, it was merely the perception? Or had the industry concluded that in fact there was a relationship?

Mr. Whitley. It was a change in some of the advertising and marketing practices. I just gave you one example such as sampling on college campuses, advertising in college newspapers. That was an industry practice, a specific one which was discontinued.

Senator Dodd. OK, if you go to the second part: how effective has it been?

Mr. Whitley. Well, I would go back to what I said in my principal statement.

Senator Dodd. Again, I come back to the point, the purpose was to try and——

Mr. Whitley. Yes.

Senator Dodd [continuing.] At least do the perception that we would not promote cigarette smoking among younger people.

Mr. Whitley. That is right. Well, 29 percent, about the time that this and other activities restricting advertising and merchandising began to take place and educational efforts and the labeling, and all these things combined, about 29 percent of youngsters under the age of 18 were smokers. That has now dropped to 21. It fluctuates, it has for the last 4 years, it has fluctuated back and forth between 18 and 21. So, you have had about a 10 percent drop. The total of the actual drop is more than that. The drop has been from 29 percent to about 21 or 18 percent. So, there has been a significant drop in the incidence of smoking by young people.

Senator Dodd. Although there is a higher increase of smoking among younger people than there ever has been before, is that not also true? In other words, children under the teenage years, getting into the age of twelve and below, those numbers have actually increased, have they not?

Mr. Whitley. I do not have data on that immediately in front of me. I have heard assertions to that effect.

Senator Dodd. I have that data in front of me, it asserts that. Do you have any data that would negate that?

Mr. Whitley. Not immediately in front of me. Again, the data I have is not specifically, does not specifically cover 11-, 12-year olds, if that is what you are talking about.

Senator Dodd. That was a concern, that actually the age has been dropping.

Second, and again if you have information and statistics that would contradict this, I would be interested in them, but a survey done among high school students, of those who are smoking, some 95 percent indicate that they intended to quit within 5 years, but that in fact only 25, or a quarter of that number who are smoking actually succeed in quitting the habit. A full 75 percent of that smoking population continues to smoke after the 5 year period.

Mr. Whitley. Well, I do not know how long after the 5-year period or how long the period of time that survey covered. As we testified earlier, the surgeon general's 1988 report, I believe it was, on smoking and health indicated that 41 million Americans have quit smoking. And the statistical abstract goes further and points out that half of the people who ever smoked have quit smoking.

Senator Dodd. A lot of them may not be around.

Mr. Whitley. Well, that was talking about people who gave up the habit.

Senator Dodd. And are still with us

Mr. Whitley. That is correct.

Senator Dodd. I would like you to check on that number, those statistics of those, the high school students, because it raises the question of whether or not the voluntary code has been effective with younger people.

Mr. Whitley. Well, you know, I do not think anything is going to be 100 percent effective——

Senator Dodd. No, I am not suggesting——

Mr. Whitley [continuing.] To persuade Americans of any age not to take up habits that involve some sort of a health risk. I do not believe any kind of a program is going to be a hundred percent effective. But I think it needs to be pointed out again that the Journal of the American Medical Association in 1987 reported on a study, a survey made of some 895 high school students, and 98 percent of them believe that smoking was a health risk and could identify specific parts of the body that they thought would be adversely affected by smoking. You know, when they are educated to that extent and they believe it to that extent, I do not know what you do beyond that to affect people making certain choices. They may be wrong choices.

Senator DODD. Do you think younger people—you mentioned how harmful it is—do you think they are also aware of the addictive nature of smoking?

Mr. WHITLEY. Well, it is hard for me to believe, Mr. Chairman, you and I are not the youngest people in the room, but when I was a youngster that age I had no doubt in my mind that cigarette smoking was habit forming, that if you started smoking cigarettes you would probably develop the habit. And it was not a habit that was very easy to give up. I do not think that is anything new. I think people know that. But the word addictive now is something else. When you start saying that cigarette smoking is addictive, you are beginning to equate it with hard drugs like cocaine and crack and heroin, and these things which are mind-altering substances and which are illegal substances. And to suggest to a young person by hanging the word addictive on cigarettes, that it is about the same thing to smoke a cigarette or to smoke pot or to snort cocaine or smoke crack or mainline heroin, that is sending the wrong message.

Senator DODD. You and I do not disagree over the fact that there are strong habit forming qualities to cigarette smoking. Using the medical term addictive is one I would use, but I appreciate the fact there are some people in the medical profession who disagree with the usage of that word. But nonetheless there is a significant habit forming quality to smoking that you and I——

Mr. WHITLEY. People develop the habit of smoking, as they develop many other habits.

The CHAIRMAN. If the Senator would yield, the testimony is overwhelming before this committee that one of the principal problems that young people are facing is what they call gateway drugs, and tobacco is right there. You are going to fly right in the face of sound medical results, as the tobacco industry has over the years. I am not going to let that go unchallenged. There is no question that nicotine is an addictive substance. And I do not think you want to state, to leave the record to indicate to us that you do not believe that it is, do you?

Mr. WHITLEY. Again, Mr. Chairman, when you use the word addictive, we think that is the wrong word. The World Health Organization does not even use the term addictive anymore. They say it has been misunderstood. Dr. Koop in 1982 said that American teenagers were addicted to video games. We hear it said that people are addicted to food, they are addicted to a lot of things. But when you use the word addict or addiction, the ordinary person conjures up visions of somebody nodding off on heroin in a ghetto alley or somebody surreptitiously snorting cocaine in a rest room or puffing crack through a pipe. And it is not right to put cigarettes in the same category and those mind-altering illegal drugs.

Senator DODD. Clearly there are distinctions, there are distinctions within the pharmaceutical products. As someone who has been a smoker, I will tell you firsthand, I mean we may quibble about the word addiction in different ways, but as someone who has gone through the quitting process, I cannot speak firsthand obviously about cocaine or crack but I can tell you about smoking.

And it is damned hard to quit. Now, you can call it habit forming. You can call it a problem I may have. But I want to tell you it was hard to keep my mitts off that pack of cigarettes. For whatever reason, that is as close to an addiction as I am familiar with.

Mr. WHITLEY. But you did it, Senator. You are one of those 41 million who did it and without any help.

Senator DODD. I am struggling. I am still struggling, I can tell you. And I know several of my colleagues who are still struggling with it. I made the commitment, but I will tell you it is tough. If that is not an addiction, I do not know what is.

The CHAIRMAN. If the Senator will yield, in the 1987 Surgeon General's Report, he has labeled it addictive.

Mr. WHITLEY. Yes, he has.

The CHAIRMAN. All right.

Senator DODD. I want to get to the constitutional question a bit, because I was reading this Houston Electric and then the follow-on case. I see Floyd Abrams here, who is an acknowledged expert in this area, or Mr. Boggs, either one. But the *Houston* case and the *Puerto Rican* case, the *Posadas* case, where the issue in the *Posadas* case was gambling in Puerto Rico. And yet there the conclusion was reached that even though legal and even though there was nothing misstated in the advertising regarding gambling, legal gambling in Puerto Rico, the courts upheld the right of the locality there to ban advertising over a legal activity, because there was a substantial State interest, was the argument, I think the bottom line argument there.

So, you did not have to prove that it was habit forming. You did not have to prove that the advertising was incorrect or fraudulent. You did not have to establish any of the things that we have been discussing here today, merely that the State drew the conclusion that this was something that they felt they have a State interest in and therefore banned the advertising.

Why would that be any different than in the sense that the Federal Government taking that position using that same logic of those two cases?

Mr. BOGGS. The *Posadas* case, Mr. Dodd, basically said the gambling, which had been illegal in Puerto Rico, was made legal in Puerto Rico. As a condition to its legality, they basically said you could not advertise gambling to local Puerto Rican residents. You could advertise to Senator Dodd all you wanted to encourage him to come to Puerto Rico and gamble but you could not advertise to local residents. So, the real distinction between that case and the other case, first of all, it was an illegal activity made legal. There was a condition put on the legality of the activity.

Second, Puerto Rico is quite different than——

Senator DODD. Are you suggesting that had it been a legal activity and that they had then decided to ban the advertising, the courts would not have reached the same conclusions?

Mr. BOGGS. They may well not have, that is correct. That is certainly the consistency of most of the commercial speech decisions in the United States involving States.

Senator DODD. I understand.

Mr. Boggs. Puerto Rico, as you also know, is quite different than a State. It is a Commonwealth. It has got very different status in terms of its citizens.

Senator Dodd. But it was a U.S. Supreme Court decision of the United States——

Mr. Boggs. Involving citizens of the Commonwealth of Puerto Rico, that is correct.

Mr. Abrams. Could I just add, Senator Dodd, that there has been a good deal of variation in results in commercial speech cases since the U.S. Supreme Court first held in the late 1970s that commercial speech was entitled to at least some First Amendment protection. And the courts have gone up and down the scales about quite how far First Amendment protection shall be afforded.

I think it is true to say that this is an area which is harder to predict in terms of future rulings than a lot of other areas. But I think it is also true to say that not only is the protection for commercial speech still recognized but that the reasons that we protect commercial speech are still valid reasons. I mean, when at the very beginning of this process the U.S. Supreme Court said that the free flow of commercial information is indispensable to our predominately free enterprise system, they were making a value judgment that it was a good thing for the public to have more rather than less information about commercial products as well as political or social matters.

It is my view that if that remains the view of the U.S. Supreme Court, and I think it does, that when they are confronted with the question, as they have not been yet, of a total ban on cigarette advertising or liquor advertising or a situation such as Senator Kennedy suggested earlier about a total ban on billboard advertising in a major area at least, that it will not only be a close question, because there are votes both ways, for sure, on the U.S. Supreme Court on that, and that there is not only a decent, a good argument that it would be unconstitutional to have these total bans, but I think that there is a really good chance that at the end of the day that that is what the U.S. Supreme Court may say.

I do not think that anybody can honestly tell you in this area that they can predict with any sense of assuredness where the Court is going to come out. But what they can tell you is that if you really believe that the protection of commercial speech means anything, that it is a good idea, that if you start talking about either banning a lot of commercial speech or encouraging States to do so about lawful products, that you are at least walking in a very treacherous area.

Senator Dodd. I understand that. I again have the highest regard—I should say it is a please to see you here, someone I consider a personal friend as well and have the highest regard for your ability. But let me quote from Judge Rehnquist at the time in that decision. He said the State has a legitimate interest to protect the health, safety and welfare, it constitutes a substantial government interest. He was talking about States there, and I presume he was not trying to make a distinction between a Commonwealth and a State. And I appreciate the academic consideration. But certainly I presume society would react because on the issue of pornography, again the academic position on something that may offend one's local sense of good taste, that we would not have too much difficulty in prohibiting or banning certain types of advertising to promote certain products if they were to fall into the area of pornographic. Am I correct in that? Do any of you disagree with that?

Mr. ABRAMS. As long as it was obscene as constitutionally defined. But what you cannot do, for example, notwithstanding what I will bet is 85 percent of the American public supporting it, is to ban dial-a-porn on television. You cannot do it. It was a nine to nothing vote within 2 years by the U.S. Supreme Court saying we cannot reduce——

Senator DODD. What if prostitution were legal in the jurisdiction and they decided they just did not want to have it promoted through billboard advertising? Do you think the Court would have difficulty in suggesting that that might violate the health and welfare of a local community and suggesting that even though legal, we are going to uphold the local jurisdiction's right to restrain promotion of the activity?

Mr. ABRAMS. I think it will be a close case. The reason it sounds like an absurd answer, if you will, is that it is not likely that in large areas of the country prostitution or drugs, say, will be legal. Suppose we legalize marijuana: fair question. Would we then say as a society, would the First Amendment then tell us that we could not ban advertising of marijuana? I think there would be a very good argument for it.

I think what comes with legalization is that you have to treat something as a lawful product. And I think, if I may say so, a lot of the testimony today seemed based on the notion that cigarettes are so bad, so offensive, so terrible that they should be treated as almost a status offense, a criminal offense, a war crime. We cannot do that with a lawful product.

Senator DODD. Again, we are looking here at the power to regulate, it is limited in one sense, but the ability to regulate the activity. For instance, in Connecticut we ban the sale of tobacco to minors. I do not know how well controlled that is. But having upheld the right for the State to regulate the activity, it seems to me, that you would also be, I think, hard-pressed to argue that they could not also regulate the promotion of the activity.

Mr. ABRAMS. Oh, I agree, that if you can ban the activity, you can also ban advertising. The question is, if you do not ban the activity, can you ban advertising? Now, *Posadas* is authority for that, Senator Dodd, you are not wrong to cite *Posadas* to us. What I am saying is that the law remains in a State of flux, and that in my view the policy reasons for protecting commercial speech remain strong enough and valid enough and that there is a good enough chance for the U.S. Supreme Court to reassert them that in this type situation that the section 955 is at least asking for trouble.

Senator DODD. Let me cite one more, just for the record, the *Board of Trustees* v. *Fox*, in 1989 in that case, where, among other things, the Court held there that restrictions need only be reasonably related to substantial governmental interest, which would seem to make even a stronger case than the *Posadas* did in terms of the ability to ban the advertising.

Mr. ABRAMS. I would just reassert my last answer to you and to say again in very brief terms, Senator, that I am not urging on you that the law is clear. What I am urging on you is that it is unclear and I am urging you to stay away from the treacherous shoals, unless you really have to get there, of asking for a major, tough, First Amendment challenge here.

Senator **Dodd**. I think your caution is a wise one. I think we are wiser to proceed with caution, unless one draws the conclusion that there is a direct relationship here between the activity and the health and welfare of those who abuse it and whether or not that activity promotes further use of it. For my own part, I am drawn more to the conclusion that that is the case.

Looking at advertising in magazines and so forth, it seems to me, I guess all of us in this business, sitting on this side of the table may look at advertising through a finer strainer, if you will, than others may because we use it so often ourselves in political activities. But nonetheless, it seems to me quite clear that there is a clear message that there is nothing adversely affecting one's health by doing this, because you see people who are tremendously healthy-looking or having just completed some health-related activity. Whether or not they are proficient at it or not is, it seems to me, irrelevant. The fact is they have just played one hell of a game of tennis or they have just finished one great game of squash or something else, and they have torched up a cigarette so that that activity has no adverse effect on their ability to perform and the activity they have just completed. Or in an academic environment or women looking at some male who is smoking with something less than interest in his intellectual abilities. It seems to me it is quite clear what the linkage is there. At least that is my sort of gut reaction, that that is the case.

If it is designed to promote new usage rather than arguing over which brands one would use, then you can have a much easier time getting beyond the caution in terms that you have suggested and one that I think is worthy of mention.

Thank you, Mr. Chairman.

The **Chairman**. Thank you very much.

Scott, you have been very patient. We try to move the hearing along quickly, but I always feel that we shortchange those who are later in the testimony. But we will include your statement in its entirety in the record. We have a leadership caucus which starts in just a few moments. Perhaps you could make that case, summarize it concisely in a reasonable period of time. We are very much interested in your testimony. I know of the work that you have done in this area, and it is very important for us to have this information. Whatever you can do to accommodate us, we would appreciate it.

Mr. **Ballin**. Thank you, Mr. Chairman. I will be as quick as I possibly can.

STATEMENT OF SCOTT D. BALLIN, COALITION ON SMOKING OR HEALTH, WASHINGTON, DC

Mr. **Ballin**. Mr. Chairman, as you know, our three organizations, the American Cancer Society, the American Lung Association, and the American Heart Association, have endorsed your legislation. We need to do a lot more in the area of tobacco education and regulation if we are going to have any significant impact on this Nation's leading preventable cause of death.

In the next several minutes what I want to do is concentrate on why we believe your legislation is so desperately needed. In spite of what the tobacco industry claims, these deadly products are the least regulated consumer products in the United States.

In the 3 hours that will have passed since this hearing commenced, over 125 people will have died in the United States from cigarette smoking. They will continue to die until the Congress of the United States acts and acts decisively.

Mr. Chairman, the lack of regulation and control over tobacco products is historical, economic and political. The one thing it is not, it is not logical. Tobacco products have been exempted from every major health and safety law in the United States, including the Consumer Product Safety Act, Toxic Substances, Fair Packaging and Labelling, and the Hazardous Substances Act.

The tobacco industry has the most irresponsible corporate record in the United States. This is an industry that still refuses to this day to acknowledge that their products cause cancer, hearth disease and emphysema.

Mr. Chairman, I want to address what we view as a number of major areas in need of congressional action, many of which are contained in your legislation, some of which we hope will be added as your bill moves through the Senate. To begin with, tobacco products need to be regulated as we regulate other products that present potential health and safety risks to the public such as foods and drugs. In the case of tobacco, it is not just a potential risk; it is a serious and well-established risk.

Is it not ironic that in spite of the fact that tobacco contains nicotine, a deadly drug described by Surgeon General Koop as addictive as cocaine and heroin, we are powerless to control its use in cigarettes and other tobacco products? Is it not a travesty that in addition to the fact that tobacco in and of itself kills, the tobacco industry is under no regulatory constraints from adding hundreds if not thousands of chemical additives to their products?

To put this lack of Federal control over health and safety of these products into further perspective, we have all heard and seen the imminent threats from the Chilean grapes containing arsenic and the one you mentioned, Perrier water tainted with benzene, and immediate reactions of the public and the Federal Government to protect our health. Both of these substances have been identified in even greater quantities in tobacco smoke, but the government has done nothing for those products.

Even Philip Morris recognized this tragic inconsistency. An internal 1959 Philip Morris document released in a tobacco litigation suit notes: If the food and drug laws were ever applied to cigarettes, certain constituents like arsenic and other insecticides and certain minor smoke constituents might have to be regulated.

In spite of Philip Morris' fears and in spite of over 20 years of attempts to bring tobacco under Federal control, these health related concerns remain unregulated and unresolved.

Mr. Chairman, I want to turn my attention now to what Secretary Sullivan and others touched on this morning, and that is the advertising, promotion, distribution and sale of tobacco products targeted at children, women and minority populations.

For too long we have listened to the tobacco industry assure us that they do not want young people to smoke, that their advertising is aimed merely at brand switching, that they do not sample and market to children, that they adhere to a voluntary advertising and regulatory code adopted 25 years ago, and that somehow because we in the health community are concerned about their targeting and marketing strategies aimed at women and minorities, we are both sexist and discriminatory. This is an industry which thinks somehow they can buy the Constitution and the Bill of Rights with their corporate profits and then convince us that they want to protect our rights as individual citizens.

One has to ask whose rights are being violated. Does and should an industry have a right to kill 390,000 Americans each year for the sake of billions of dollars in profits? Does an industry have a right to advertise and promote and hand out sample of a product that is as addictive as cocaine and heroin? Does an industry have a right not to disclose to the public what it is putting in those products in the form of potentially dangerous additives?

I would say that does not the public have a right to be protected from these and other abuses by the tobacco industry? To borrow one of their own propaganda campaign phrases, Mr. Chairman, we have had enough, and enough is enough.

I would like to take the last couple of minutes to focus on some of the advertising and the First Amendment issues that were discussed here earlier. While your bill does not directly address the issue or prohibiting or restricting cigarette advertisements, I do want to take the opportunity to address what we feel the U.S. Supreme Court has said about this issue.

We have heard all the arguments on both sides of the First Amendment. We know what the U.S. Supreme Court said in Central Hudson Gas and in *Posadas* and most recently in the *Board of Trustees of the State University of New York* v. *Fox*. In *Posadas* Justice Rehnquist wrote on behalf of the Court that if the legislature has the power to prohibit certain conduct such as cigarette smoking, then it also has the power to take the less intrusive step of allowing the conduct of reducing demand through restrictions or bans on the advertising of that. The U.S. Supreme Court has said that those restrictions need only be reasonable.

Is it reasonable to restrict or prohibit advertising and other promotional practices of this addictive killer when it is promoted with things that imply that with its use come success, attractiveness, athletic ability and sexuality? Is it reasonable to restrict or prohibit its advertising when we know that at least 3,000 children are trying cigarettes for the first time each and every day and that cigarettes often serve as a gateway drug for other drug abuse problems? And is it reasonable to restrict advertising and promotion of these deadly products because of the tobacco industry's flagrant failure to take voluntary actions it promised 25 years ago?

Obviously, Mr. Chairman, the answer has to be yes.

Clearly, Mr. Chairman, we have a lot to do in our battle against this major killer. While we spend billions of dollars to fight illicit drug use which is killing tens of thousands of Americans, the

Office on Smoking and Health's budget remains at a low figure of $3.5 million. The tobacco industry spends almost twice as much in 1 day to promote the use of tobacco than the Office on Smoking and Health spends in an entire year. This is a national travesty.

I want to thank you, Senator Kennedy, and other members of the committee for giving this important issue the priority it deserves. We pledge to work with you to insure that this legislation becomes law. Thank you.

The **Chairman**. Thank you very much. Without objection, your prepared remarks will be inserted in full into the record.

[The prepared statement of Mr. Ballin follows:]

Prepared Statement of Scott Ballin

Senator Kennedy and members of the committee, my name is Scott Ballin. Today I appear before the committee on behalf of the three largest voluntary health organizations in the United States: the American Cancer Society, the American Heart Association, and the American Lung Association. Together, these organizations represent over 5 million dedicated volunteers—volunteers whose sole goal is to keep America healthy.

As you know Mr. Chairman, our organizations are in full support of your legislation. We believe, as you and Senator Hatch do, that we need to do much more in the area of education and regulation of tobacco products, if we are going to have any significant impact on this Nation's leading preventable cause of death.

For the next several minutes I want to concentrate on why your legislation is so desperately needed.

In spite of what the tobacco industry claims, and in spite of the fact that tobacco products account for approximately 390,000 deaths each year, these deadly products are the least regulated consumer products in the United States. In the three hours that will have passed since this hearing commenced, over 125 people will have died in the United States from cigarette smoking. They will continue to die until the Congress of the United States' acts, and acts decisively.

Mr. Chairman, the lack of regulation and control over tobacco products are historical, economical, and political—not logical.

Tobacco products have been exempted from every major health and safety law in the United States, including the Consumer Product Safety Act, the Toxic Substances Act, the Fair Packaging and Labeling Act, and the Hazardous Substances Act.

The tobacco industry has the most irresponsible corporate record in America. This an industry who still refuses to acknowledge the incontrovertible scientific fact that their products cause cancer, heart disease and emphysema.

Mr. Chairman, I want to address what we view as a number of major areas in need of Congressional action—many of which are contained in your legislation, some of which we hope will be added as your bill moves through the Senate.

As I stated, tobacco products have unfortunately been exempted from all major health and safety laws in the United States. We think that that needs to be changed. Tobacco products need to be regulated as we regulate other products that present potential health and safety risks to the public, such as foods and drugs. In the case of tobacco, it isn't just a potential risk, it is a serious and well established risk.

Isn't it ironic that in spite of the fact that tobacco contains deadly nicotine, a drug described by the surgeon general as addictive as cocaine and heroine, we are powerless to control its use in cigarettes and other tobacco products? Isn't it ironic that this addictive substance, when not used in cigarettes, is in fact, strictly regulated by the FDA, and has resulted in products, actually less harmful than tobacco, being banned from sale in the market place?

Isn't it a travesty that in addition to the fact that tobacco in and of itself, kills, that the tobacco industry is under no regulatory constraints from adding hundreds, if not thousands, of chemical additives to tobacco? Not only does the public not know what is being added to tobacco products, no Federal agency monitors whether these additives, when burned, can produce pharmacological results that are harmful or even deadly. No government agency has any authority to require the public disclosure of these additives, or the authority to remove additives, found to be harmful. The industry's argument of "trade secrets" is merely a smokescreen. If the FDA can require disclosure of ingredients in foods, then surely similar requirements can be applied to disclosure of ingredients in tobacco.

Isn't it a travesty that the FDA has the authority to remove cancer causing additives in foods, and the Federal Government is powerless to do anything for a product that causes nearly 125,000 lung cancer deaths alone each year?

It is well accepted that the industry uses low-tar and nicotine advertising and promotion to convince smokers and nonsmokers alike that these products are somehow "safer," "healthier," and less addictive.

We are distressed that the industry has been free to make these implied claims about their products without any requirements of substantiation. While touting claims of reduced "tar" and "nicotine," the industry does nothing, nor is it required, to tell the public about the 4,000 constituents in tobacco smoke. The 1989 Surgeon General's Report noted that some 43 carcinogens have been identified in tobacco smoke.

To put this lack of Federal control over the health and safety of these products into further perspective, we've all seen and heard of the imminent health threats from Chilean grapes containing arsenic and Perrier water tainted with benzene and the immediate reactions by the Federal Government to protect our health. Both of these substances have been identified, and in greater quantities, in tobacco smoke, but FDA has been powerless to act. Even Philip Morris recognizes the tragic inconsistency. An internal 1959 Philip Morris document, released in a tobacco litigation suit notes,

> "if the food and drug laws were ever applied to cigarettes, certain constituents like arsenic and other insecticides and certain minor smoke constituents might have to be regulated."

And again in 1963, another internal memo to the Philip Morris research director notes:

> "We believe the next medical attack on cigarettes will be based on the co-carcinogen idea. With hundreds of compounds in smoke, this hypothesis will be hard to contest."

In spite of Philip Morris' fears and in spite of over 20 years of attempts to bring tobacco under Federal Government control, these health related concerns remain unregulated and unresolved. It's clearly time for Congress to bring tobacco under a health and safety regulatory scheme.

I want to now turn my attention to a subject which Secretary Sullivan has touched on, and that is the advertising, promotion, distribution and sale of tobacco products targeted at children, women and minority populations.

These are areas which also warrant immediate action on the part of the Congress. For too long, we have listened to the tobacco industry assure us that they don't want young people to smoke, that their advertising is aimed merely at brand switching, that they don't sample or market to children, that they adhere to a voluntary advertising and regulatory code adopted in 1964, and that somehow, because we in the health community are concerned about their targeting and marketing strategies aimed at women and minorities, we are sexists and discriminatory. This is an industry which thinks that somehow they can "buy" the Constitution and Bill of Rights with their corporate profits, and then convince us that they want to protect our rights as individual citizens. One has to ask whose rights are being violated.

—Does and should an industry have a right to kill 390,000 Americans each year for the sake of billions of dollars in profits?

—Does an industry have a right to advertise, promote, and hand out samples of a product that is as addictive as cocaine and heroin?

—Does an industry have a right to target children with misleading advertising that suggests that the product will somehow make one more successful, sexually attractive, athletic and sophisticated?

—Does an industry have a right to not disclose to the public what it is putting in its products in the form of potentially dangerous additives?

I would say, doesn't the public have a right to be protected from these and other abuses by the tobacco industry?

To borrow a phrase from one of the industry's own propaganda campaigns, we say, "Enough is enough"

Contrary to the claims of the tobacco industry and its allies, the advertising, promotion, and marketing of tobacco products constitutes a health threat to the American public. These practices encourage young people to begin to smoke, and to continue to use tobacco as well. We've seen it in the United States, and now we are seeing it in the Asian markets, where the industry is demanding that it be allowed to advertise and promote its products to populations, such as women and children, who historically have not smoked. The argument against the industry's ludicrous claim that advertising merely promotes brand switching is best expressed in a quote from Emerson Foote, a former Chairman of the Board of McCann-Erickson, one of the world's largest advertising agencies:

> "The cigarette industry has been artfully maintaining that cigarette advertising has nothing to do with total sales. This is complete and utter nonsense. The industry knows it is nonsense. I am always amused by the suggestion that advertising, a function that has been shown to increase consumption of virtually every other product, somehow miraculously fails to work for tobacco products."

In January of last year, experts met in Houston, Texas to discuss and make recommendations to the Bush administration and the Congress on what were viewed as the most important policy goals related to tobacco and health. In addition to some specific recommendations on the need to regulate tobacco additives, and constituents which I have already mentioned, the conference recommended the following:

- The establishment of a Federal minimum age of 21 for the purchase of tobacco products, coupled with strong enforcement authority at both the State and Federal levels.
- The prohibition of all tobacco sampling, distribution of discounted products and "couponing."
- A ban on the sale of tobacco products through vending machines.
- The elimination of brand name promotions, including brand name sponsorships, free sampling, "couponing, the display of brand names in connection with events open to the general public, the placement of brand names or logos on any consumer products, including but not limited to hats and t-shirts, sports cars and other sporting equipment, and the payment of any money to any other person to engage in any practice prohibited by this provision.
- A ban on all tobacco-related advertising in locations where sports events are held.
- A limit on all remaining tobacco advertising to a "tombstone" format, as follows: "No human figure or facsimile thereof, no brand name logo or symbol, and no picture other than the picture of a single package of the tobacco product being advertised displayed against a neutral background, shall be used in any tobacco product advertisement, provided that the product package displayed shall be no larger than the actual size of the product package and shall contain no human figure or facsimile thereof, no brand name logo or symbol and no pictures."

  The ads should be restricted to black print on white background, with type size and typeface of the warning label. The tombstone restrictions also should apply to all tobacco packages. The text on tobacco packages shall contain and be limited to brand name, in ingredients, "tar", nicotine, and carbon monoxide levels, corporate name and any other governmentally mandated information.

Many of those recommendations are contained in your legislation, Mr. Chairman.

Mr. Chairman, I want to put today's hearing, your legislation, and the need to regulate tobacco products, into perspective. In 1964, 25 years ago, Dr. Luther Terry released the first surgeon general's report on smoking, implicating cigarette smoking as a cause of cancer.

Fearful that their products could undergo regulatory controls or even be banned, the industry did what they continue to do so well today: they put up a smokescreen by offering up a voluntary advertising, promotional and sampling code designed to give the public and the government the impression that they are a responsible industry. For 25 years, there has been nothing but example after example of violations of this code.

The codes was purportedly developed to prohibit advertisements and sampling practices aimed at persons under the age of 21, as well as assuring that unproved and unsubstantiated health claims were not made. Mr. Chairman, I'd like to submit for the record copies of the industry's codes.

In 1964, the industry readily and openly acknowledged that promotion efforts which related cigarette smoking to "sophistication," "sexual attraction," "success," "social prominence," and "athletic ability," were in fact advertisements which appealed to young people. They also stated that they would not use cartoon characters.

The industry's code further required that advertisements should not suggest that a person's attractiveness, appearance or good health is related to cigarette smoking.

To this day, the tobacco industry has claimed that it has adhered to this unenforced code. Some of the ads you see here today clearly show they have not and, we submit, never will until Congress acts to prevent this type of advertising. Yet, they have repeatedly acknowledged to Congress and the American public that the themes contained in advertisements, such as those appearing here, are in fact aimed at young people and do encourage young persons to smoke. To quote the former Chairman of the Tobacco Institute, Edward Horrigan, at a hearing before Congress in 1982:

> "In 1964 we adopted a cigarette advertising code prohibiting advertising, marketing, and directed at young people . . . each company still adheres to the principles of this Code."

I think, Mr. Chairman, this long-standing admission of 25 long years speaks for itself. Isn't it ludicrous and hypocritical that, now faced with proposed congressionally mandated restrictions on advertising, the industry changes its mind after 25 years and says "no, advertising and promotion that carries such themes do not encourage young people to smoke, they merely are aimed at brand switching."

Mr. Chairman, the point is that we have not really made much progress—we're exactly where we were on this issue 25 years ago. It's time we stop waiting for this industry to do what it has said it would do for 25 years. In that period of time, from 1964 to today, Mr. Chairman, millions of people have died from smoking cigarettes. How many more are going to die while we debate the same old issues again and again as if they've never been discussed?

We believe it is time for the Congress to get on with its business in properly regulating tobacco products.

While S. 1883 does not specifically address the issue of prohibiting or restricting cigarette advertisements, I want to take the opportunity to discuss what the U.S. Supreme Court has said about the issue. We've heard all of the arguments on both sides of the First Amendment. We know what the U.S. Supreme Court said in *Posadas de Puerto Rico Associates* v. *Tourism Company of Puerto Rico* and, most recently, in *Board of Trustees of the State University of New York* vs. *Fox*, or the so-called "Tupperware" case.

In *Posadas*, Justice Rehnquist wrote, on behalf of the Court, that if a legislature has the power to prohibit certain conduct—such as cigarette smoking—then it also has the power to take the less intrusive step of allowing the conduct but reducing demand for the conduct through restrictions or bans on advertising for it.

Writing for the majority in the "Tupperware" case, Justice Scalia elaborated on this:

> "[W]hile we have insisted that the 'free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing . . . the harmless from the harmful,' . . . we have not gone so far as to impose upon them the burden of demonstrating that the distinguishment is 100 percent complete, or that the manner of restriction is absolutely the least severe that will achieve the desired end. *What our decisions require is a 'fit' between the legislature's ends and the means chosen to accomplish those ends—'a fit that is not necessarily perfect, but reasonable, that represents not necessarily the single best disposition but one whose scope is "in proportion to the interest served."' . . . Far from eroding the essential protections of the First Amendment, we think this disposition strengthens them. To require a parity of constitutional protection for commercial and non-commercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech.'"* (Emphasis added.)

The "Tupperware" case, Mr. Chairman, strongly reaffirms the conclusion of the earlier decision in *Posadas*. Two things contained in the excerpt from Justice Scalia's opinion are clear. One, within broad limits, it is the U.S. Congress which has the authority to determine what the restrictions on commercial speech are to be. Two, the restrictions must only be "reasonable" to do everything we can to discourage smokers and nonsmokers alike from taking up the addiction or prolonging their addiction when this product is killing 400,000 Americans each year.

Is it reasonable to restrict or prohibit advertising and other promotional practices of this addictive, killer product when it is promoted with themes that imply that with its use comes success, attractiveness, athletic ability and sexuality? Is it reasonable to restrict or prohibit its advertising when we know that at least 3,000 children are trying cigarettes for the first time each and every day and that cigarettes often serve as a gateway to other drug abuse problems? Is it reasonable to restrict advertising and promotion of these deadly products because of the tobacco industry's flagrant failure to take voluntary actions it promised 25 years ago?

Obviously, Mr. Chairman, the answer has to be yes. By restricting tobacco advertising we are not embarking on a "slippery slope" as the industry and its allies claim. Tobacco is, first of all, a unique product in our society, one that, as I mentioned, would have been banned by the Congress a long time ago by other health and safety statutes, except for the fact that the industry, through it's political might, over the years has been able to have it excluded from such laws as the Consumer Product Safety Act, the Toxic Substance Act and the Hazardous Substances Act, to name a few.

Second, it is the Congress who must carefully assess, on a product by product basis, which products warrant restrictions in advertising and promotion. And, Mr. Chairman, the Congress has already done this on numerous occasions. We are not breaking "new" ground in recommending the regulation of tobacco advertising. Congress gave the FDA the authority to regulate the advertising of drugs and, in certain instances, food.

In the case of prescription drugs (and one can easily argue that tobacco products are drugs), the Congress' and the FDA's rationale for restricting their advertising, promotion and sale is obvious. Failure to do so would encourage their use—tantamount to drug pushing. Can you imagine allowing Valium to be advertised in a similar fashion to tobacco products? I can see it now: the Virginia Slims woman says, "I've come a long way, baby. I calm down and relax with a Valium, and you should too." Isn't it reasonable that tobacco products be held to at least the same standard as other legal drugs?

In all of the debate over whether advertising affects consumption of a product and encourages people to use that product, we seem to have forgotten what the U.S. Supreme Court has said about the level of proof needed. In both the *Central Hudson* and *Posadas* cases, the Court, with little discussion or fanfare, acknowledged that advertising serves to increase demand for the product. In *Central Hudson*, the Court stated:

> "The State's interest in energy conservation is directly advanced by the Commission Order at issue here. *There is an immediate connection between advertising and demand for electricity. Central Hudson would not contest the advertising ban unless it believed that promotion would increase sales.*"

And in *Posadas* the Court again applied a "common sense" approach with respect to the affects of advertising on the demand for a product, stating:

> "Step three asks the question whether the challenged restrictions on commercial speech 'directly advance' the governments asserted interest. The Puerto Rico Legislature obviously believed when it enacted the advertising restrictions here, that a of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised. *We think that the legislature's belief is a reasonable one, and the fact that the appellant has chosen to litigate this case all the way to this Court indicates that appellant shares the legislature's view.*"

Applying this "common sense" approach used by the Court in *Central Hudson* and *Posadas*, it is easy to reach a conclusion that cigarette advertising serves to increase and maintain demand for the product. Otherwise (paraphrasing *Central Hudson* and *Posadas*), why else would the industry fight as hard and oppose a ban if advertising didn't promote the use of the product?

The tobacco industry agrees, but in rhetoric only, that children shouldn't smoke or use tobacco. But it knows that it is in the youth market, it has its greatest opportunities for the recruitment of new smokers. According to the surgeon general's most recent report, 25 percent of high school seniors who have ever smoked had their first cigarette by sixth grade, one half by eighth grade. We must therefore, step up our efforts to ensure that our Nation's children, 3,000 of whom try cigarettes for the first time each day, do not have access to these deadly products and are better educated about the dangers associated with them. We need to ensure that tobacco products become a part of this Nation's drug and alcohol education strategies.

Mr. Chairman, clearly we have a lot to do, a lot to catch up on, on all fronts, in our battle against this major killer. While we spend billions of dollars to fight illicit drug use, which is killing tens of thousands of Americans, the Office on Smoking and Health's budget remains at the low figure of $3.5 million. The tobacco industry spends almost twice as much in one day to promote the use of tobacco than the Office on Smoking and Health spends in an entire year.

I want to thank you, Senator Kennedy, and you, Senator Hatch, and the other members of the committee, for giving this important issue the priority it deserves. We pledge to work with you to ensure that this legislation becomes law.

46 NATIONAL ORGANIZATIONS SUPPORTING RESTRICTIONS ON TOBACCO MARKETING AND PROMOTION AND FEDERAL REGULATION OF TOBACCO

American Cancer Society

American Lung Association

American Public Health Association

National Alliance of Senior Citizens

National Association of Elementary School Principals

American Academy of Pediatrics

American Association for Respiratory Care

American College of Cardiology

American Council on Science and Health

Americans for Nonsmokers' Rights

Association of Schools of Public Health

Association of Minority Health Professions Schools

National Association of Public Health Policy

Oncology Nursing Society

American Association of Dental Schools

Physicians' Committee for Responsible Medicine

Center for Science in the Public Interest

Western New York Coalition Against Smoking

Public Voice for Food and Health Policy

American Medical Student Association

Citizens Against Tobacco Smoke

National Minority Health Association

American Academy of Family Physicians

American Heart Association

American Medical Association

National PTA

Association of State and Territorial Health Officials

National Medical Association

American Medical Women's Association

American Society of Internal Medicine

Action on Smoking and Health

Committee for Children

American College of Preventive Medicine

Roswell Park Cancer Institute

New Jersey Group Against Smoking Pollution

Smokefree Educational Services

Association for Nonsmokers-Minnesota

Scenic America

Illinois Interagency Council for a Tobacco-Free Society

American Society of Clinical Oncology

American Licensed Practical Nurses Association

American Society of Hematology

Association of American Cancer Institutes

American Diabetes Association

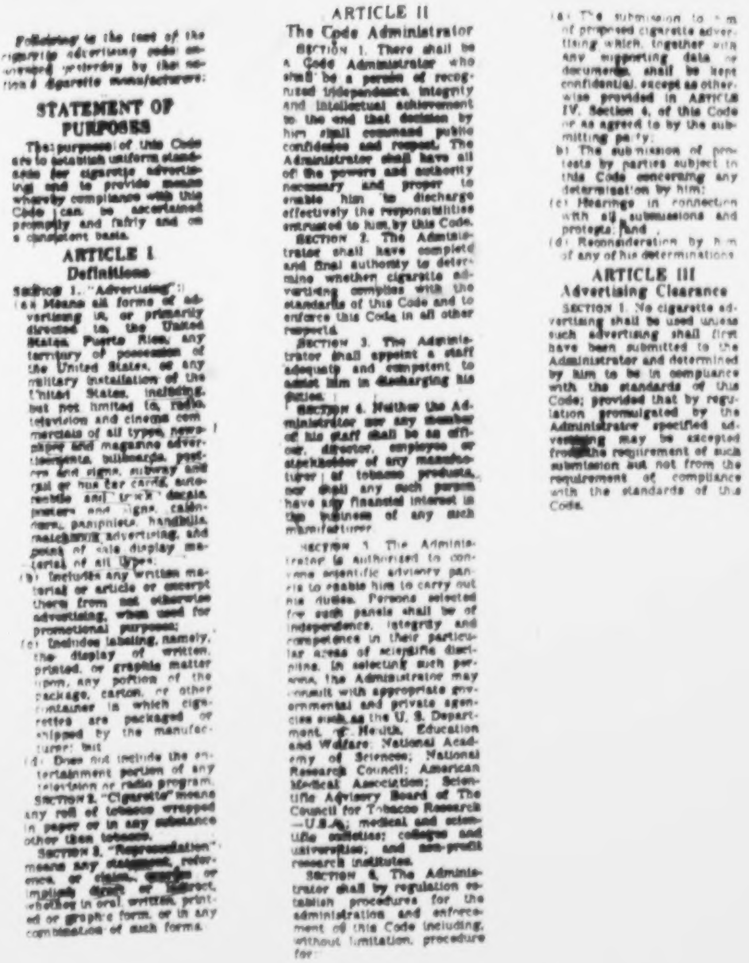
American Academy of Otolaryngology

American College of Obstetricians and Gynecologists

American Heart Association

AMERICAN LUNG ASSOCIATION
The Christmas Seal People®

AMERICAN CANCER SOCIETY®



Following is the text of the cigarette advertising code announced yesterday by the nation's cigarette manufacturers:

STATEMENT OF PURPOSES

The purposes of this Code are to establish uniform standards for cigarette advertising and to provide means whereby compliance with this Code can be ascertained promptly and fairly and on a consistent basis.

ARTICLE I
Definitions

SECTION 1. "Advertising":

(a) Means all forms of advertising in, or primarily directed to, the United States, Puerto Rico, any territory or possession of the United States, or any military installation of the United States, including, but not limited to, radio, television and cinema commercials of all types, newspaper and magazine advertisements, billboards, posters and signs, subway and rail or bus car cards, automobile and truck decals, posters and signs, calendars, pamphlets, handbills, matchbook advertising, and point of sale display material of all types;

(b) Includes any written material or article or excerpt therefrom not otherwise advertising, when used for promotional purposes;

(c) Includes labeling, namely, the display of written, printed, or graphic matter upon any portion of the package, carton, or other container in which cigarettes are packaged or shipped by the manufacturer; but

(d) Does not include the entertainment portion of any television or radio program.

SECTION 2. "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

SECTION 3. "Representation" means any statement, reference, or claim, express or implied, direct or indirect, whether in oral, written, printed or graphic form, or in any combination of such forms.

ARTICLE II
The Code Administrator

SECTION 1. There shall be a Code Administrator who shall be a person of recognized independence, integrity and intellectual achievement to the end that decision by him shall command public confidence and respect. The Administrator shall have all of the powers and authority necessary and proper to enable him to discharge effectively the responsibilities entrusted to him by this Code.

SECTION 2. The Administrator shall have complete and final authority to determine whether cigarette advertising complies with the standards of this Code and to enforce this Code in all other respects.

SECTION 3. The Administrator shall appoint a staff adequate and competent to assist him in discharging his duties.

SECTION 4. Neither the Administrator nor any member of his staff shall be an officer, director, employee or stockholder of any manufacturer of tobacco products, nor shall any such person have any financial interest in the business of any such manufacturer.

SECTION 5. The Administrator is authorized to convene scientific advisory panels to enable him to carry out his duties. Persons selected for such panels shall be of independence, integrity and competence in their particular areas of scientific discipline. In selecting such persons, the Administrator may consult with appropriate governmental and private agencies such as the U. S. Department of Health, Education and Welfare; National Academy of Sciences; National Research Council; American Medical Association; Scientific Advisory Board of The Council for Tobacco Research—U.S.A.; medical and scientific societies; colleges and universities; and non-profit research institutes.

SECTION 6. The Administrator shall by regulation establish procedures for the administration and enforcement of this Code including, without limitation, procedure for:

(a) The submission to him of proposed cigarette advertising which, together with any supporting data or documents, shall be kept confidential, except as otherwise provided in ARTICLE IV, Section 4, of this Code or as agreed to by the submitting party;

(b) The submission of protests by parties subject to this Code concerning any determination by him;

(c) Hearings in connection with all submissions and protests; and

(d) Reconsideration by him of any of his determinations.

ARTICLE III
Advertising Clearance

SECTION 1. No cigarette advertising shall be used unless such advertising shall first have been submitted to the Administrator and determined by him to be in compliance with the standards of this Code; provided that by regulation promulgated by the Administrator specified advertising may be excepted from the requirement of such submission but not from the requirement of compliance with the standards of this Code.

NEW YORK TIMES, Text of Cigarette Industry's New Code
April 28, 1964

ARTICLE I

Advertising Standards

SECTION 1. All cigarette advertising and promotional activities shall be subject to the following:

(a) Cigarette advertising shall not appear (i) On television and radio programs, or in publications, directed primarily to persons under twenty-one years of age; (ii) In spot announcements during any program break in, or during the program break immediately preceding or following a television or radio program directed primarily to persons under twenty-one years of age; (iii) In school, college, or university media (including athletic, theatrical and other programs); (iv) In comic books, or comic supplements to newspapers.

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts conducted on school, college, or university campuses, or in their facilities, or in fraternity or sorority houses.

(d) Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

(e) Natural persons depicted as smokers in cigarette advertising shall be at least twenty-five years of age and shall not be dressed or otherwise made to appear to be less than twenty-five years of age. Fictitious persons so depicted in the form of drawings, sketches or any other manner shall appear to be at least twenty-five years of age in dress and otherwise.

(f) Cigarette advertising may use attractive, healthy looking models, or illustrations or drawings of persons who appear to be attractive and healthy, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking.

(g) No cigarette advertising shall contain a picture or an illustration of a person smoking in an exaggerated manner.

(h) Cigarette advertising shall not depict as a smoker any person well known as being, or having been, an athlete.

(i) Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

(j) Testimonials from athletes or celebrities in the entertainment world, or testimonials from other persons who, in the judgment of the Administrator, would have special appeal to persons under twenty-one years of age, shall not be used in cigarette advertising.

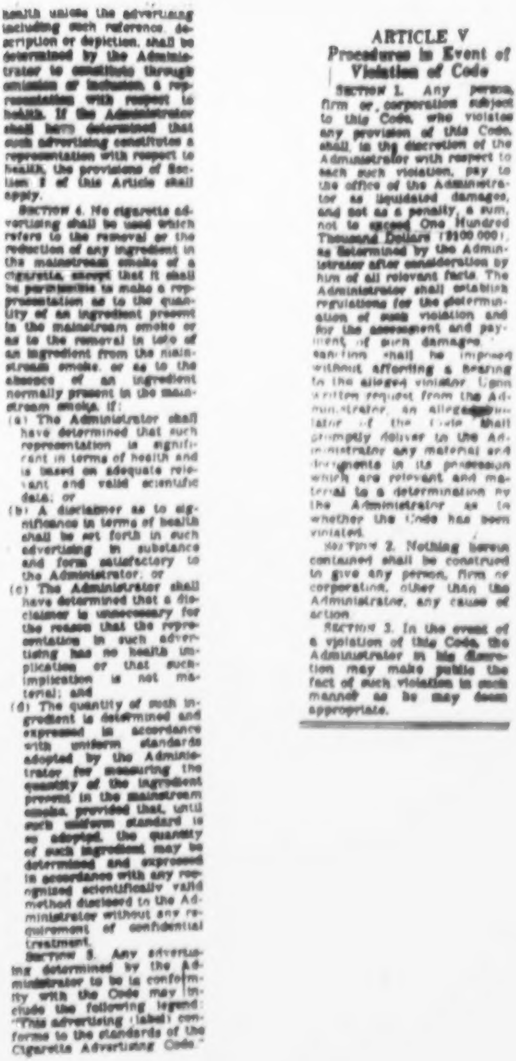
SECTION 2. No cigarette advertising which makes a representation with respect to health shall be used unless:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate, relevant and valid scientific data; or

(b) If the Administrator shall have determined it to be appropriate, a disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that the representation with respect to health in such advertising is not material.

SECTION 3. The inclusion in cigarette advertising of reference to the presence or absence of a filter, or the description or depiction of a filter, shall not be deemed a



health unless the advertising including such reference, description or depiction, shall be determined by the Administrator to constitute through omission or inclusion, a representation with respect to health. If the Administrator shall have determined that such advertising constitutes a representation with respect to health, the provisions of Section 2 of this Article shall apply.

SECTION 4. No cigarette advertising shall be used which refers to the removal or the reduction of any ingredient in the mainstream smoke of a cigarette, except that it shall be permissible to make a representation as to the quantity of an ingredient present in the mainstream smoke or as to the removal in toto of an ingredient from the mainstream smoke, or as to the absence of an ingredient normally present in the mainstream smoke, if:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; or

(b) A disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that a disclaimer is unnecessary for the reason that the representation in such advertising has no health implication or that such implication is not material; and

(d) The quantity of such ingredient is determined and expressed in accordance with uniform standards adopted by the Administrator for measuring the quantity of the ingredient present in the mainstream smoke, provided that, until such uniform standard is so adopted, the quantity of such ingredient may be determined and expressed in accordance with any recognized scientifically valid method disclosed to the Administrator without any requirement of confidential treatment.

SECTION 5. Any advertising determined by the Administrator to be in conformity with the Code may include the following legend: "This advertising (label) conforms to the standards of the Cigarette Advertising Code."

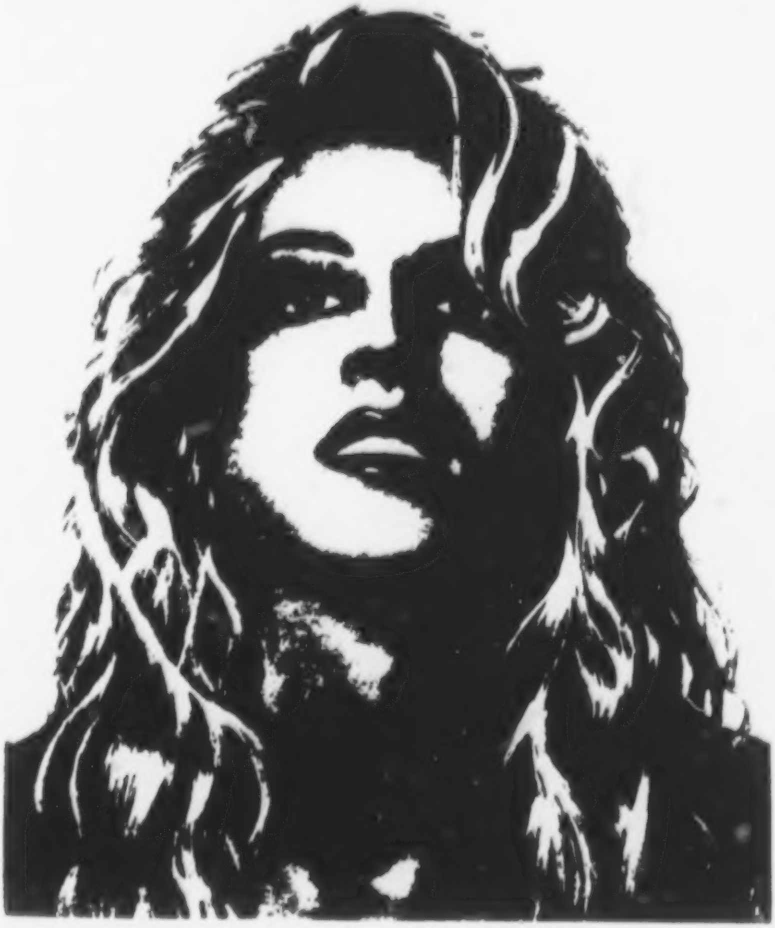
ARTICLE V
Procedures in Event of Violation of Code

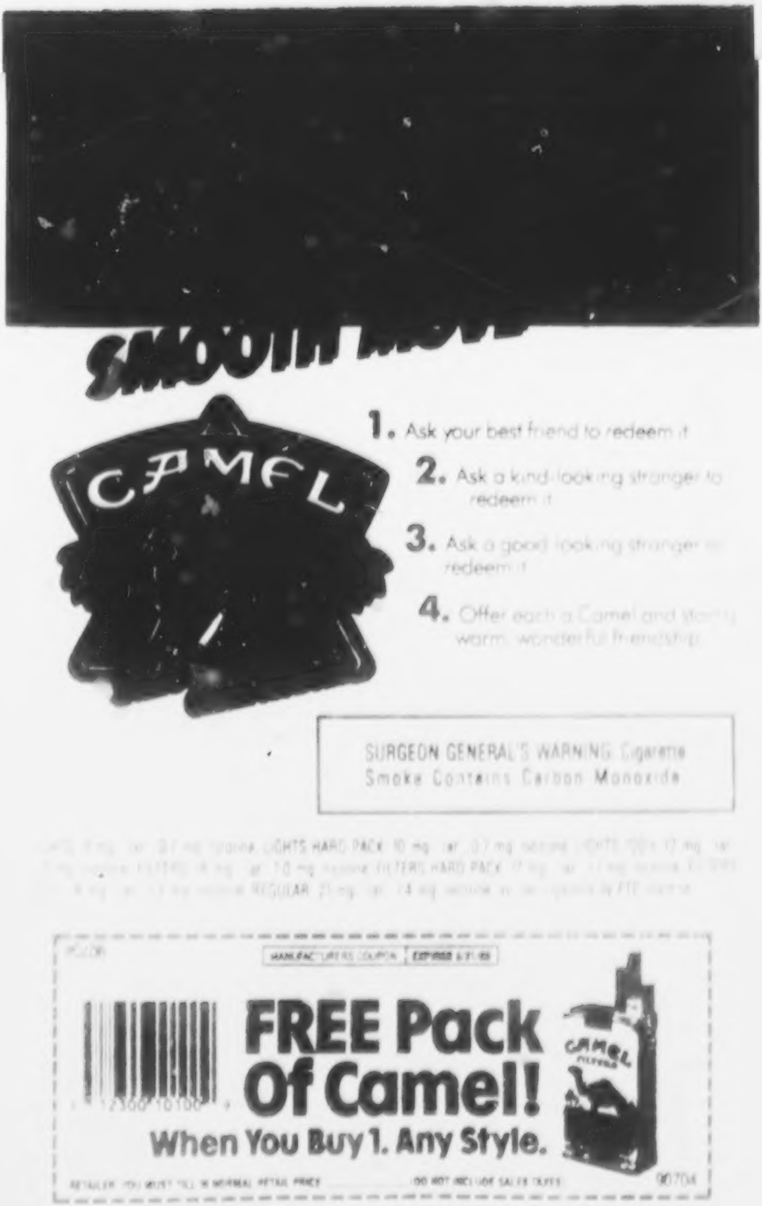
SECTION 1. Any person, firm or corporation subject to this Code, who violates any provision of this Code, shall, in the discretion of the Administrator with respect to each such violation, pay to the office of the Administrator as liquidated damages, and not as a penalty, a sum, not to exceed One Hundred Thousand Dollars ($100,000), as determined by the Administrator after consideration by him of all relevant facts. The Administrator shall establish regulations for the determination of such violation and for the assessment and payment of such damages. [illegible] sanction shall be imposed without affording a hearing to the alleged violator. Upon written request from the Administrator, an alleged violator of the Code shall promptly deliver to the Administrator any material and documents in its possession which are relevant and material to a determination by the Administrator as to whether the Code has been violated.

SECTION 2. Nothing herein contained shall be construed to give any person, firm or corporation, other than the Administrator, any cause of action.

SECTION 3. In the event of a violation of this Code, the Administrator in his discretion may make public the fact of such violation in such manner as he may deem appropriate.

BORED? LONELY? RESTLESS?
WHAT YOU NEED IS...





SMOOTH MOV

1. Ask your best friend to redeem it
2. Ask a kind-looking stranger to redeem it
3. Ask a good looking stranger to redeem it
4. Offer each a Camel and start a warm, wonderful friendship

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide

MANUFACTURER'S COUPON

FREE Pack Of Camel!

When You Buy 1. Any Style.

RETAILER: YOU MUST FILL IN NORMAL RETAIL PRICE ______ (DO NOT INCLUDE SALES TAXES)

90704

TO WHOM IT MAY CONCERN

**R.J. REYNOLDS WILL TARGET 18-20 YEAR OLD FEMALES
WITH A NEW CIGARETTE CALLED DAKOTA IN HOUSTON IN APRIL
PLEASE NOTE THE EXTENSIVE FIELD MARKETING EFFORTS WHICH WILL
ATTRACT TEENAGERS TOO!!!!**

A CONCERNED CITIZEN

DAKOTA FIELD MARKETING CONCEPTS

**Presented to: R. J. Reynolds Tobacco Co.
Presented by: Promotional Marketing, Inc.
September 21, 1989**

INTRODUCTION

The following field marketing programs, including tactical plans, have been developed to reflect and best serve the objectives of the overall Dakota marketing plan. Those objectives include:

- positioning Dakota as the choice among YAFS 18-24;
- developing exciting, contemporary, and relative marketing executions;
- utilizing tightly targeted, extremely impactful, and innovative communication techniques;
- developing executions appealing to the YAFS while not adversely impacting YAMS;
- reinforcing the brand image
- capturing consumer names for direct marketing purposes

Presently, the test market is scheduled for second quarter, 1990 in Houston, Texas. Although complete market research must be conducted, PMI has initiated some study of this market, the target (relative to this market), target night clubs, etc. Thus, the proposed programs, detailed herein, have been appropriately designed and are appropriately executable based on the preliminary market data.

PERMANENT PRESENCE CONTINUITY CONCEPT:

DAKOTA Video Kiosk: In order to develop a contiguous approach to field marketing, permanent presence materials are key. Bar kits, signage, etc. are all proven effective approaches to permanent presence. In the case of DAKOTA, however, there is a unique opportunity to develop a novel presence piece that not only provides continuity, but also allows for high-level product exposure and promotion exposure and updates within various venues. The DAKOTA logo treatment, and the DAKOTA colors, lend themselves to the video kiosk's eye-catching graphic design.

Each of the bars or clubs participating in the selected DAKOTA promotions will be given a dramatically designed video kiosk unit that will promote DAKOTA's introduction and the specific DAKOTA activity(s) scheduled for the market. The video kiosks will resemble a 90's video juke box and will utilize the DAKOTA colors, containing a built-in translite DAKOTA logo, color video monitor, speakers, video playback deck, and an appropriate DAKOTA video loop tape.

The units will provide a unique club activity in their own right, while exposing DAKOTA as an attractive and appropriate product for target consumers and providing information and publicity for the various DAKOTA promotion elements.

The video will be primarily graphically produced so that with each promotion change or update, footage can be adjusted and customized efficiently. There is also an opportunity to use either still or live action footage of the models who appear in the DAKOTA advertising - reinforcing the personality and message of DAKOTA.

CONCEPT:

DAKOTA (THE CIGARETTE) PRESENTS DAKOTA (THE BAND)

BASIC IDEA:

DAKOTA presents its own rock band at selected night clubs with exciting support promotions.

DESCRIPTION:

The rock group DAKOTA is assembled through auditions in a selected city(s). The group members, which are men, reflect the personality and "look" portrayed in the advertising. This concept is somewhat unique to DAKOTA. Being a new product, an appropriate image can be connected to both the brand and the band. Also, DAKOTA - the name of the product, is also perfect for a rock band's name.

The group is hired under contract to play a pre-selected number of test market dates. The group does no brand promotion, but simply plays its sets each evening as any other band. However, the group utilizes a large DAKOTA banner for the stage backdrop and other stage materials, such as speakers, monitors, etc. are identified with the DAKOTA brand identification and colors. The group has special stage clothing (teeshirts, jackets, etc.) bearing the DAKOTA name and logo. The act travels to each location in their own special, highly decorated DAKOTA limo.

The music style the group performs is rock - with a slight skew towards heavy metal. Both original and cover material are utilized.

SUPPORT:

Cassettes of DAKOTA, the band, are given out to women smokers who can "easily" unscramble the words on a special card handed to them as they enter the club (i.e. DAKOTA - Where Smooth Smokes).

CONTINUITY:

This card also serves as the entry form for women to enter the DAKOTA Night sweepstakes at the promotion. The winners drawn each night (5) are driven to the next performance of DAKOTA in a DAKOTA limo and become the official DAKOTA Groupies for a night. This also serves the direct mail list generation objective.

The Dakota Night winners also get their picture taken with the members of the band, get all their drinks free, are admitted free, etc. They are given special DAKOTA shirts or jackets like the ones worn on stage by the band.

A life size photoboard is made of the act and all women get free instant photos of themselves with the band in a special DAKOTA photo folder.

The DAKOTA video kiosks publicize the DAKOTA band and show clips of the band in performance, give the performance date, time, etc.

EXTENSION:

Guest Artist Series: The band is composed entirely of men, but they are looking for a great girl rock singer to perform as Guest Artist with the band. Posters in clubs, newspaper ads and direct mail (to local talent agents) publicize the competition. Women enter the competition at the clubs by filling out a form. They are provided with an audition time and a cassette of three songs performed by the band. The cassette is used by the entrants to rehearse their audition and performance. The audition is conducted during scheduled hours (non-operating) in a nightclub. The auditions are used to eliminate most entrants. Three finalists are chosen from this audition and are scheduled to perform with DAKOTA during the next scheduled weekend show.

The finals are then conducted during the DAKOTA performance and are videotaped. A combination of the consumer votes from the audience and evaluation of the live performance by a panel of judges determines the winner. Their performance videotape is one of their prizes. The Grand Prize winner receives the videotape and a cash prize.

The Grand Prize winner also performs with the group as Guest Artist during the remaining DAKOTA performances.

CONTINUITY:

The Guest Artist Contest will be promoted on the video kiosks throughout the various clubs. Also, the winner will receive exposure through the kiosks.

CONCEPT:

ROCK UNTIL YOU DROP WITH DAKOTA

BASIC IDEA:

A mega Battle of the Bands takes place in a **large rental facility** and runs all night (from 9PM **until 5AM).**

DESCRIPTION:

Rock Until You Drop with DAKOTA will be **highly publicized by a local** radio station whose **key DJ will be the MC for this** one-time-only event. **Bands may enter the Battle** by submitting **tapes and photos to the radio station.** A panel of judges preselects and schedules the finalists.

On the night of the Battle, two stages are used so that one band can be setting up while another one plays. In this way the music can be continuous.

The entire night will be formed around a "big party" theme. The bands will provide the entertainment portion in addition to DJs making appearances and providing additional music.

Sampling and other DAKOTA promotions will be conducted during the Battle. Prior to the Battle, DAKOTA Night promotions will be executed.

The winning band gets a cash prize and bookings at the five top DAKOTA clubs. (DAKOTA pays the bands, the club books the dates, and the evening entertainment is hosted by DAKOTA.)

SUPPORT:

Prior to the all night battle, DAKOTA parties will be held in night clubs where, as before, five names will be drawn each evening for DAKOTA Night (limo, free dinner, drinks, etc.) from the entries that evening. This again serves the name generation objective. DAKOTA premiums and free tickets to the Battle will also be given as prizes.

Each person who wins a ticket receives two Free Admissions - one for herself and one for a friend.

CONTINUITY:

The bands that are chosen to appear at the Battle will be shown throughout the clubs on the **video kiosks. Also, the winner will** receive **additional support and publicity** through the kiosks after the Battle.

CONCEPT:

DAKOTA'S MUSIC VIDEO SCREEN TESTS

BASIC IDEA:

DAKOTA will conduct screen tests and will provide an opportunity for the five finalists to appear in a "feature role" in a music video with a popular rock artist.

DESCRIPTION:

The screen tests will be highly publicized by a local radio station. Registration will be conducted in clubs for a number of weeks. Another person, a friend, etc., must sign-up the participant for the screen test. In this way, both names are captured.

When each contestant is entered, they appear in front of a video camera and are video taped while they explain "why" they want to appear with the determined Star. The tapes of the entrants is then screened by a panel of judges and twenty-five semi-finalists are chosen.

The twenty-five semi-finalists are then scheduled for their "screen test". Friends, family, and the public are all invited to the "screen test".

The video is produced prior to the promotion so that the Star is singing during the video and there are open shots or cuts to be edited in - the edits are where the contestant's scenes are inserted. Thus it seems that the contestant was actually "in" the video.

A panel of judges reviews the completed videos and chooses a winner. The five finalists are announced through radio spots promoting the final announcement of the winner and the personal appearance of the Star.

At a determined club, the winner is announced by the Star. All five videos, and others, are shown on a large video screen. The Star signs autographs.

The winner receives a cash prize, a CD player, the Star's CD's, and an autographed picture of themselves with the Star. The other finalists receive all of the above, except the cash prize.

SUPPORT:

A photoboard of the Star will be used in the clubs. Game cards with trivia questions about the star will be used to deliver brand identified premiums to Dakota smokers.

Also, the Dakota Night will be run as a simultaneous promotion.

CONTINUITY:

The in-club kiosks are used to promote the screen tests with the rock star looking for a leading actress. Also, the kiosks will replay the screen tests publicizing the promotion.

DAKOTA FIELD MARKETING CONCEPTS

Budget Estimate

o DAKOTA Video Kiosks

o DAKOTA Presents DAKOTA

o Rock Until You Drop With DAKOTA

o DAKOTA's Music Video Screen Tests

o Continuity Sampling

o Bar Presence Materials

1. *Permanent Presence Continuity Materials*

Based on creating a permanent high-presence video, with music, and video kiosk to be utilized for product introduction and promotion information and updates:

- Pre-production expenses for video	$12,000
- Creative development/design for video kiosk	3,000
- Production of 10 video kiosks	78,000
- Production of video - including loop copies	84,000
TOTAL	$177,000

II. *Dakota Presents Dakota*

A. **Expenses based on creating and producing one touring band and all support activities and materials:**

- **Pre-production expenses.** **Including casting, rehearsal, costumes, legal, field marketing research**	$58,500.
- **Recording expenses for eight songs for Dakota cassette**	57,600.
- **Video Kiosk programming**	9,000.
- **Creative development/production of photoboard, stage materials, limo badges, and purchase of cameras**	22,800.
- **Creative development/mechanical preparation** - all other materials	44,200.
TOTAL	**$192,100.**

B. Support Materials - **weekly estimates** based on five promotion nights:

- **Dakota Cassettes (250 per week)**	$1,000
- **Dakota Night Sweepstakes Forms (2000** per week)	850.
- **Dakota Posters (250 per week)**	950.
- **Poloroid Photos and Folders (1000** per week)	1,500.
- **Teeshirts (500 per week)**	2,700.
- **Dakota Jackets/Shirts** (30 per week)	1,440.
WEEKLY TOTAL SUPPORT MATERIALS	**$8,440.**

C. **Program Execution** - weekly estimates based on five promotion nights:

- **Band/tech/crew compensation** including hotel and per diem	$15,300.
- **Dakota Night (25 winners per week)**	1,500.
- Limo	1,200.
- **Gratis (1000 per week)**	600.
- **Baskets/wraps/sampler** uniforms	TBD
- **Warehousing/Insurance**	780.
- **Advertising Support**	3,000.
- **Supervisory expenses, marketing** manager, staff travel	2,800.
- **Program** Supervision/Coordination	2,000.
WEEKLY TOTAL	**$27,180.**

D. **Dakota Extension** - Guest Artist:

- **Pre-production, creative development/mechanicals**	$34,200.
- **Weekly expenses including program** supervision/coordination	1,720.

III. *Rock Until You Drop With Dakota*

A. Expenses based on creating and producing one battle of the bands and peripheral promotion acitivities and materials:

- Pre-production expenses including legal and field marketing research	$11,700.
- Video Kiosk programming	9,000.
- Creative development/production of photoboard, venue and stage materials, limo badges, and purchase of cameras	42,000.
- Creative development/mechanical preparation - all other materials	44,200.
TOTAL	$106,900.

B. Support Materials - weekly estimates based on five promotion nights:

- Dakota Cassettes (250 per week)	$1,000.
- Dakota Night Sweepstakes Forms (2000 per week)	850.
- Battle Entry Forms (25 per week)	30.
- Dakota Posters (250 per week)	950.
- Poloroid Photos and Folders (1000 per week)	1,500.
- Teeshirts (500 per week)	2,700.
- Dakota Jackets/Shirts (30 per week)	1,440.
WEEKLY TOTAL SUPPORT MATERIALS	$8,470.

C. Program Execution - weekly estimates based on five promotion nights:

- Dakota Night (25 winners per week)	$1,500.
- Limo	1,200.
- Gratis (1000 per week)	600.
- Baskets/wraps/sampler uniforms	TBD
- Warehousing/Insurance	780.
- Advertising support	3,000.
- Supervisory expenses, marketing manager, staff travel	2,800.
- Program supervision/coordination	2,000.
WEEKLY TOTAL	$11,880.

D. Event Expenses:

- Venue rental, party production	$60,000.
- Equipment rental	12,000.
- Cash prizes/judges fees/DJ compensation	25,800.
TOTAL EVENT EXPENSES	$97,800.

VI. *Dakota's Music Video Screen Test*

A. **Expenses based on creating and producing music video screen tests and all support activities and materials:**

- **Pre-production expenses. Including star search, auditioning, legal, field marketing research**	$17,700.
- **Music video configuration**	12,000.
- **Video Kiosk programming**	9,000.
- **Creative development/production** of music video set, photoboard, limo badges, **and purchase of cameras**	28,800.
- **Creative development/mechanical preparation** - all other materials	40,800.
TOTAL	$108,300.

B. Support Materials - **weekly estimates based** on five promotion nights:

- Dakota Video Cups **(2000 per week)**	$1,000.
- Entry Forms/Information (250 per week)	150.
- Dakota Posters (250 per week)	950.
- Poloroid Photos and Folders (1000 per week)	1,500.
- Teeshirts (500 per week)	2,700.
- Dakota Jackets/Shirts (30 per week)	1,440.
WEEKLY TOTAL SUPPORT MATERIALS	$7,740.

C. Program Execution - weekly estimates based on five promotion nights:

- Limo	$1,200.
- Gratis (1000 per week)	600.
- Videotaping equipment/expenses	8,400.
- Baskets/wraps/sampler uniforms	TBD
- Warehousing/Insurance	780.
- Advertising Support	3,000.
- Supervisory expenses, marketing manager, staff travel	2,800.
- Program Supervision/Coordination	2,000.
WEEKLY TOTAL	$18,780.

D. Event Expenses:

- Venue Rental/Party Production	$30,000.
- Equipment Rental	12,000.
- Cash Prizes	12,000.
- Other Prizes	3,000.
- Star Compensation/Judges Fees	49,800.
TOTAL EVENT EXPENSES	$106,800.

V. *Continuity Sampling*

Executional costs based on 5 sampling nights per week:

- Sampling personnel - 4 samplers each night	$1,440.
- Gratis product (250 per night)	750.
- Baskets/Wraps/Uniforms	TBD
- Program Development/Supervision/Administration	2,000.
WEEKLY CONTINUITY SAMPLING	$4,190.

VI. *Presence Materials*

- Creative Development	TBD
- Translite Sign	TBD
- LED Sign	TBD
- DAKOTA Neon	TBD
- Primp Mirror	TBD
- Napkin/Coaster/Stirrer Holder	TBD
- Napkins/Coasters/Stirrers	TBD
- Table Tents	TBD
- Ashtrays	TBD
- Packaging	TBD
- Handling/Postage	TBD

TRONE
ADVERTISING INC.

V.F. PROMOTION - PROGRAM OVERVIEW

Objectives

- Develop integrated year 1 promotion program for V.F. that:

1. Generates immediate initial trial.
2. Generates continuing trial and repurchase.
3. Builds and reinforces brand awareness and image.
4. Achieves target smoker "involvement" with the brand.

Strategy

- Develop high impact "lead" promotions to gain immediate trial and build brand awareness and image.

- Determine ways to utilize the various RJR "areas of strength" to maximize V.F. promotional programs. These areas include:

1. Direct mail.
2. Premium development.
3. Pack-action.
4. Field marketing/sampling.

- Develop promotion program options that include specific recommendations aimed towards:

1. Generating pack trial/retrial in traditional and non-traditional outlets.
2. Sampling via conventional and unconventional sampling methods and existing or created event tie-in opportunities.
3. The development of continuity programs to maintain target involvement with the brand.
4. Enhancing brand awareness and image.
5. Building highly visible brand presence among the target and her friends.

Executional Guidelines

- Make sure promotions are not so broad-based or executed so that they entice non-target smokers.

- Promotions/Premiums must be relevant to the target and her lifestyle while not being a "turn-off" to men.

- Unconventional promotional and sampling methods will be required to achieve objectives.

VIRILE FEMALE DEMOGRAPHIC/PSYCHOGRAPHIC REVIEW

A. Target Customer

1. Demographics

a)	Age/gender:	Caucasian Females, Age 18-20 (secondarily 21-24)
b)	Education:	No education beyond high school
c)	Occupation:	Entry level service or factory job

2. Lifestyle

a)	Employment:	Now working at whatever job she can get; high level of unemployment and part-time
b)	Attitude Toward Work:	Work is a job; not a career, a way to make money
c)	Dress:	Jeans, knit tops, sweaters, shorts, warm-up suits, sweat-shirts/pants
d)	Cosmetics:	Wears little eye shadow or make-up
e)	Favorites:	

TV Program	Roseanne
TV Role	Roseanne Evening Soap Opera (Bitches)
Music	Classic Rock & Roll from the 60's & 70's
Music Groups	All Male Groups

3. **Aspirations**
    - a) To have an ongoing relationship with a man
    - b) To get married in her early twenties and have a family.
    - c) To have fun with her boyfriend and partying with her friends.
4. **Current practices relative to the category**
    - a) Now smoke Marlboro
    - b) Buys the pack, from convenience stores, supermarkets, and drug stores
5. **How she spends her free time**
    - a) With her boyfriend doing whatever he is doing
6. **Interests, activities and places the target gathers**
    - a) Partying with friends
    - b) Dancing, going to dance clubs & bars (those over 21 or with a borrowed ID)
    - c) Going to concerts (classic Rock & Roll, all male groups)
    - d) Cruising
    - e) Classic Cruising cars (50's & 60's hot cars)
    - f) Watching television (entertainment they can afford)
    - g) Going to movies, renting movies
    - h) Going camping, to the lake, to the river
    - i) Apartments where they live
    - j) Athletic activities:
        - (1) Company softball team
        - (2) Company basketball team
        - (3) Bowling league, social bowling

k) Shopping

  (1) At the mall

  (2) Jeans speciality stores, especially the lower priced jeans stores, Cheap Joes

  (3) Low price clothing stores: T. J. Maxx/$6 Store

l) Events they attend:

  (1) Drag races

  (2) Motocross, Motor cycle races

  (3) Hot Rod shows, Cycle Shows

  (4) Tractor Pulls, Monster Trucks

  (5) Wrestling

  (6) Tough Man Competition

  (7) Fairs, Carnivals

  (8) Friends--partying

HOT BUTTONS

-Men/having their "guy"

-Hanging out/being with their guys

-Partying w/friends & boyfriend

-Going to "classic" rock concerts

-"Classic" rock music

-Soap operas

-Movies

-Video movies

-Getting married/kids in next couple of years

-Dancing/clubs

-Cruising

-Watching TV

-Classic cars

-Softball

-Bowling

-Camping

-Hanging out at mall

-Motocross

-Drag racing

-Hot rod/cycle shows

-Wrestling

-Astrology

-Toughman competition

-State Fairs/carnivals

-Tractor pulls/monster truck "shows"

PROMOTION

V.F. Rock Choice Awards

CONCEPT

-Offer on-pack music related premiums.

-Overlay is a "People's Choice" contest on-pack where participants rate their favorite rock groups.

-Consumer sends in votes (proofs) for their favorite group.

-Cash/prize structure is implemented for most correct votes (proofs) for winner in category.

-Each entrant receives a commemorative poster of the winners.

PREMIUMS

Music videos
Music cassettes
Walkman

HOT BUTTONS

Winning big
Music
Music Idols

PROMOTION

Classic Rock Contest

CONCEPT

-Deliver on-pack music-related premiums.

-Overlay with rock classic trivia contest on pack.

Sample question: Who did Sammy Hagen replace in Van Halen?

Answers:
A. Eddie Murphy
B. Paul Butterfield
C. David Lee Roth

Correct Answer: David Lee Roth

-Participants mail in answers with proofs. Most correct answers and proofs wins song with their name in it and a trip to the recording session.

each correct entry
is a chance to
win
Maybe 50 correct
entries picked for final
big contest

PREMIUMS

Rock cassettes
Rock love song cassettes
Cassette holder
T-shirt

HOT BUTTONS

Win big
Music
Free gifts

PROMOTION

V.F. Best of 1989

CONCEPT

-Develop an on-pack contest for consumers to select their favorite movies, songs, rock groups, TV shows, entertainers, etc.

-Registration ballots are on-pack and utilized with user friendly computers in-store or at malls.

-All ballots are preprinted with the names of entertainers and entertainment that is to be voted on.

-Participant registers votes on card. Inserts ballots into computer which keeps cards for vote tabulation.

-Each participant sending in 20 or more proofs receives a collectors edition volume of the results that includes a video of best movie, cassette of best song and group, autographed picture of favorite stars, etc.

HOT BUTTONS

Entertainment
Free gift

PROMOTION

Win In Atlantic City

CONCEPT

-On-pack gambling related premiums

-Overlay with on-pack gambling trivia contest. Use rub-off technology to confirm correct answers. More than one answer may be right. Participants are to check all correct answers.

Sample question: What beats a straight flush?

Answers:
A. Full house
B. Royal flush
C. 3 of a kind
D. 5 of a kind

Correct Answer:
Royal flush
5 of a kind

-Consumers send in correct answers (proofs). Most correct answers wins.

-Grand prize is all expenses paid trip to Atlantic City plus gambling bankroll.

PREMIUMS

Mini poker machine
V.F. playing cards
Mini roulette wheel

HOT BUTTONS

Win big
Gambling
Free gifts

PROMOTION

V.F. Treasure Hunt Contest

CONCEPT

-Offer V.F. customized regional map on pack featuring target Hot Spots within a hundred mile radius.

-Create a series of on-pack clues leading participant to treasure location and $25,000 prize.

Sample Clue: Start where liberty first rang and take the shortest route to boat house row in Fairmount Park. From there find the nearest on ramp to the Schuylkill Expressway and go north on the expressway exactly 1 1/2 times the number of miles it took you to go from where liberty first rang to boat house row. You are now within 40 mils of the treasure location and ready for clue number two.

-Participants sending in the most clue tickets and the correct treasure location win. Equal distribution of prize goes to all winners.

EXTENSION OPPORTUNITIES

-Unique twists could be added to map such as the use of water or heat to reveal special hidden clues.

-Alternative map could feature a fantasyland as opposed to a real place.

HOT BUTTONS

-Chance to win big money

-Fun and games

-Something to do at parties

-what about "murder" party-like game

PROMOTION

V.F. Soap Opera Trivia Video

CONCEPT

-Offer targeted soap/TV related premiums on pack.

-Overlay with on-pack soap trivia contest on videos as first premium.

-Video depicts famous soap opera story lines then asks "What happens next?"

Sample Question: What did Vivian do next?

Answers:
A. Marry Pete
B. Go to bed with Rod
C. Leave the country
D. Kill herself

Answer:
Marry Pete
Go to bed with Rod

-Consumers answer questions on pack and send in answers. Most correct answers (proofs) wins. More than one answer may be correct. Participants must mark all correct answers.

-Cash and/or prize structure is implemented.

PREMIUMS

-Continuing saga comic strip or video - 3 or 4 installments.

-Subscription to Soap Opera Digest.

-Mini TV with pocket for cigs.

-TV band radio.

HOT BUTTONS

Win big
Soap operas
Free gifts

PROMOTION

Hidden Pictures (You Can Be A Star)

CONCEPT

-Develop photo-related premiums offered on pack.

-Overlay with hidden picture contest where participants are provided with on-pack illustrations in which a number of other pictures are hidden.

-On-pack picture is a black and white line drawing of a current ad. Hidden pictures within the line drawing will be items of interest to target, i.e. Walkman, car, sunglasses, etc.

-Participant circles the pictures and mails them in with proofs. Most proofs and found pictures wins a poster of winner stripped into a rock group, cone head or Road Warrior poster. Cash/Prize structure could also be implemented

PREMIUMS

Trick camera
Kazoo that looks like film
Trick photos

HOT BUTTONS

Winning
Games
Free gifts

PROMOTION

Great Times Sweepstakes

CONCEPT

-A series of three grand prizes specifically designed for target Hot Buttons.

-Prizes to include: Great Party, Hot Car, $25,000 Cash.

-On-pack premiums related to prizes.

-Participants call an 800# to enter for each prize; one entry per call, enter as often as you like. A drawing is conducted to select the winner for each prize.

PREMIUMS

Miniature car key chain w/working headlights (same car as grand prize car)
V.F. money clip
Party T-shirt

HOT BUTTONS

Win big
Hot cars
Money
Partying

PROMOTION

Fantasy Poconos Honeymoon

CONCEPT

-Create a series of on-pack his and her premiums.

-Overlay with a sweepstakes to win a "Honeymoon" in the Poconos.

-Participants are instructed to call a 900 number to enter as often as they like. A drawing is conducted to select the winner.

PREMIUMS

Unisex robes
Towels
Slippers

PROMOTION

Be A Soap Star Sweeps

CONCEPT

-Deliver Soap Opera/TV related premiums on-pack.

-Overlay with a sweepstakes to win a walk-on part in your favorite soap opera.

-Participants enter as often as they like through the use of an 800 number.

EXTENSION OPPORTUNITIES

-Create a Soap Improvisational Group that travels to bars/clubs and conducts live soap opera with audience participation. Audience warm-up could be soap trivia.

-Additional or alternative on-pack offer could be a soap opera game played with friends. Character cards and descriptions are delivered on-pack. Interactions between characters are delivered on subsequent packs.

PREMIUMS

Free subscription to Soap Opera Digest
Mini TV with pocket for cigarettes
TV band radio

HOT BUTTONS

TV
Soap operas
Winning
Games

PROMOTION

Star In A Romance Novel

CONCEPT

-Develop his and her premiums for delivery on-pack.

-Overlay with a sweepstakes for a customized romance novel and poster.

-Novel will feature names of recipient, their friends and significant others; along with descriptions of each, their cars, likes and dislikes, etc. All facts are woven into a romance novel. Photos will be requested for the purpose of book cover and poster designed with their likeness.

-Additional on-pack is a token for 2 free photographs to be taken in-store at special V.F. photo booth.

-Participants are asked to keep one photo and send the other in with their sweepstakes form for novel/poster customization.

-Winners are selected in drawing.

ALTERNATIVE

Romance novel customization could be a mail-in offer with proofs or proofs and cash.

PREMIUMS

Double headset Walkman
Interlocking mugs
Interlocking pendants

HOT BUTTONS

Romance
Winning
Love relationships
Boyfriends

PROMOTION

V.F. For Two

CONCEPT

-Offer a series of self grading quizzes on-pack that allow you to instantly rate your lover, your relationship, yourself, etc.

-Utilize rub-off technology to determine scores. Score totals are referenced on back of quiz with analysis.

-Overlay with sweepstakes to win a superdate to the Hotspot of your choice.

-Use 900# for sweeps entry. Enter as often as you like. Winners are selected in a drawing.

HOT BUTTONS

Boyfriends
Dating
Love relationships
Win big

PROMOTION

We've Got Your Ticket

CONCEPT

-Offer on-pack vouchers for $1.00 that can be collected and redeemed for up to full admission to target events at local stadium or coliseum.

-Vouchers could work in conjunction with wrestling matches, car shows, rock concerts, movies, 4X4 contests, and other entertainment opportunities.

HOT BUTTONS

Something Free
Music
Wrestling
Cars
Movies
Clothes
Stereo/TV Systems

PROMOTION

Shop With V.F.

CONCEPT

-Offer vouchers on 2-pack purchase for $1.00 that can be collected and redeemed for up to full cost of electronics purchase.

-Vouchers could work in conjunction with target electronics chain, i.e. Dee's Appliances (Circuit City type chain in Philadelphia).

HOT BUTTONS

Something free
Stereo systems/auto stereo equipment
TV's/VCR's

PROMOTION

Love On Pack

CONCEPT

-Develop a sequential series of 3 or 4 V.F. romance novels delivered on-pack.

-Each novel leads into the next promoting continued pack purchase.

EXTENSION OPPORTUNITIES

-Overlay with cash/prize sweepstakes. Deliver on-pack coupons for free V.F. romance novel. On separate display offer novels for sale with sweepstakes offer inside. No purchase is necessary.

HOT BUTTONS

Romance
Win big

PROMOTION

Pocket The Savings

CONCEPT

-Offer 3 packs free with the purchase of a V.F. T-shirt.

-Offer with in-store drawing in every outlet for V.F. denim or leather jacket

-Jackets are on display in-store and won by consumer registering at that store.

HOT BUTTONS

T-shirts
Winning

PROMOTION

Box Office Bonanza

CONCEPT

-On-pack vouchers for free movie rental.

-Tie-in promotion with a local video rental store.

ALTERNATIVE

-Tie-in promotion with movie producer (MGM) for free rental on a newly released film.

HOT BUTTON

Movie watching

PROMOTION

V.F. Rock-Off

CONCEPT

-Offer a series of on-pack, music related premiums.

-Overlay is communication of a battle of the bands contest with qualifying rounds conducted in target bars/clubs.

-Tie-in events with a local radio station to do a series of remotes at qualifying rounds and finale.

-Radio station will provide peak awareness, promotional announcements; arrangements with bars and other outside vendors; coordination of events and bands and their own selection of giveaways.

-Finale is a 4 band competition/party held in a warehouse or coliseum. Cash or prize structure is implemented.

-Additional promotion for events is at point of purchase.

EXTENSION OPPORTUNITIES

-Qualifying rounds could become mini V.F. parties that include heavy sampling, screening, giveaways, and games such as dance competitions, Name That Tune, V.F. pinball machine contest, phone book ripping contest, dart and/or pool competitions, boyfriend/girlfriend photos, etc.

-Invitations to qualifying rounds and finale could be distributed through conventional sampling methods.

PREMIUMS

Battle of the Bands T-Shirt
Rock and Roll Cassettes
Radio or Cassette Players
Music Videos
Rock Star Posters
Radio Watch
Concert Tickets

HOT BUTTONS

Music
Partying

PROMOTION

Night Of The Living Hunks

CONCEPT

-Deliver "hunk" oriented premiums on-pack.

-Overlay with V.F. male strip shows in target bars/clubs.

EXTENSION OPPORTUNITIES

-Bar nights could include contests to vote for your favorite hunk and win a date with him. Heavy sampling, screening, giveaways, i.e. life-size hunk cut-outs.

PREMIUMS

Hunk calendars
Collectible baseball-style hunk cards

HOT BUTTONS

Men
Dating
Bars

PROMOTION

Cruisin' For A Party!

CONCEPT

-Offer a series of targeted, car-related premiums on-pack.

-Overlay with a series of V.F. cruising parties conducted in large parking lots on or near the "main drag."

-Main event of parties would be offer for on the spot poster of you, your friends and your car. Special camera and poster equipment are brought on-site with a logo backdrop. Cars pull in front of backdrop for picture and 22 x 28 poster is then processed in a half hour.

-Promote events via in-store signage and tie-in with a targeted radio station to promote the events and build strong awareness and large crowd attendance.

Radio station to conduct live remotes at cruising parties, handle bulk of arrangements, execution, recruiting of additional sponsors and choosing sight locations.

EXTENSION OPPORTUNITIES

-Cruising parties can be conducted with a series of additional gifts and activities to include: V.F. window decal, cigarettes, screening, any prizes from the radio station, and register to win Superdate.

-Work with local Chevy dealer to provide red Corvette convertible for posters.

-Offer an additional prize to any car coming in with a V.F. window decal/bumper sticker already on their car that is distributed free at retail.

PREMIUMS

Window decal
V.F. license plate
Auto shade
Cruising party T-shirt
Sunglasses
License plate necklace
Can cooler with ashtray

HOT BUTTONS

Cars
Cruising
Partying

PROMOTION

Get A Grip On A Winner

CONCEPT

-Develop wrestling-related premiums delivered on pack.

-Overlay with V.F. sponsored wrestling tournament with local wrestlers.

-Additional overlay is sweepstakes to win the right to be Honorary Manager of one of the wrestlers. Sweeps is delivered at point of purchase prior to the event by utilizing an 800 number. Registration is also allowed the night of the event to insure a winner.

-The winner's name is selected at the beginning of the event.

PREMIUMS

Wrestling belt buckle
Poster
Mini revenger

HOT BUTTONS

Wrestling
Winning
Free gift

PROMOTION

V.F. On-Site At Special Events

CONCEPT

-Contract with coliseum of other arenas to give out samples as people enter the events.

-Create a series of targeted premiums to accompany samples - premiums are designed to be highly visible billboards at the events.

-Select target events such as wrestling matches, rock concerts, car shows, etc.

PREMIUMS

Noisemakers (wrestling matches)
Beachball (rock concert)
Classic car key chain (car shows)

HOT BUTTONS

Wrestling
Music
Cars
Free premiums

PROMOTION

V.F. Limo Parties (All Year Long)

CONCEPT

-Build a V.F. customized limousine or van.

-Offer to consumers for Superdates and parties.

-Use of vehicle can be obtained as prize in drawing.

-Date vehicle is used as an on-going program and to tie-in with other programs, such as fairs, carnivals, festivals for sampling, screening and giveaways.

EXTENSION OPPORTUNITIES

-Vehicle is equipped with chauffeur, bar, food, samples, giveaways.

HOT BUTTONS

Dates
Partying
Hot cars
Freebees
Winning

PROMOTION

V.F. Nights

CONCEPT

-Create party packages specifically designed for V.F. target hot spots. Bowling alleys, bars, apartments, company gatherings.

BOWLING ALLEYS

-Create a V.F. midnight bowling party; rotate through lanes in city.

-Offer game and food discounts with pack of V.F.

-Have targeted prizes and giveaways for mini-competitions. Highest score of the night, lowest score of the night, 3 strikes in a row, 3 gutterballs in a row.

-Prizes/giveaways might include V.F.: bowling balls, shirts, product sampling.

BARS

-Select target bars for V.F. nights package.

-Create a series of games and attractions such as V.F. pinball machine, pool/dart competitions, matchmaker game, product sampling.

-V.F. band could be created for these nights for dance competitions, name that tune, lip syncing and song contests.

-Offer prizes and/or cash, giveaways.

APARTMENTS

-Create party packages offered to target apartment complexes free of charge.

-Design party and match making games similar to bar package.

-Might add in secret apartment game - give clues - locate and win prizes.

-Parties to be held at club house or nearby bar.

COMPANY PARTIES

-Create a series of picnic activities and offer free of charge to target employers for company parties, picnics, barbecues.

-Companies are provided with game essentials such as sacks for a sack race, etc. We would also provide prizes for the competitions along with someone to conduct sampling, screening.

PROMOTION

V.F. Softball Tournament Packages

CONCEPT

-Provide local women's or co-ed softball league with special tournament packages.

-Packages include: Prizes, trophies, scoreboard logos, banners and perhaps premium giveaways to spectators.

-Heavy sampling and screening could be conducted at events.

EXTENSION OPPORTUNITIES

-Grand prize could be uniforms and equipment for winning team.

HOT BUTTONS

Sports
Winning
Freebees

PROMOTION

Direct Mail T Shirt Screening

CONCEPT

-Develop a direct mail package to targeted consumers through the use of an outside list.

-Package to include:

A. Postcard mail-in offer for a free T-shirt (postcard is used as a further screening device)

B. Invitation to V.F. Rock Off or other lead event.

C. A sweepstakes entry form to win a Superdate in the V.F. limousine.

D. An 800 # they can call to receive free product through the mail.

-All smoking respondents sending in postcards will receive a T-shirt and product. Non-smokers receive a T-shirt.

HOT BUTTONS

Free T-shirt

PROMOTION

Clerk Program

CONCEPT

-Develop V.F. buttons for in-store clerks.

-Clerks are asked to wear buttons and point out new brand to target customers.

-Incentive device is the chance for clerks to win money if spotted wearing button and endorsing product to target.

-Employ a team of spotters to canvas the stores and award prize money on the spot for the first 3-4 weeks of the introductory period.

HOT BUTTONS

Win money

PROMOTION

Store POS

CONCEPT

-Produce a logo, in-store permanent/semi-permanent signage package.

-Items might include:

- Door decals
- in/out stickers
- Floormats
- Change cups
- Banners
- Neon signs
- Counter mats
- 3-D motion signs
- Clock
- Gas pump toppers
- Store hour signs

PRIZES

Grand

-$25,000 Cash
-Superdate Trip: weekend in Poconos, weekend trip to Bon Jovi concert
-Great Party: indoor live band party, outdoor bonfire barbecue
-Classic Vehicle: Corvette convertible, custom van, 4X4 Jeep, 4X4 pick-up
-Trip: local beach/mountain resort; Atlantic City/Las Vegas; Disney World, whit water rafting.
-Electronics: home stereo/car stereo; TV; VCR; Compact Disc
-Wardrobe Shopping Spree

Medium

-Leather Jacket - Bomber style, western, biker
-Belt Buckle - Brass, porcelain, silver/turquoise
-Superdate Night: Bar hopping in limo/cruising in van
-Denim Jacket: Updated style, traditional western, blazer
-Record Collection: Classic rock, contemporary hit, country
-Jewelry: Silver/turquoise, braided, scented, gold

Token

-On the spot poster of you with: friends, car, boyfriend, all
-T-shirt with photo of: boyfriend, you and boyfriend
-Book with your names in it: romance novel, comic book
-Astrological chart done for : you, boyfriend, comparison of both

PREMIUMS

Music Oriented

Rock N Roll Cassettes
Radio or Cassette Players
Music Videos
Rock Star Posters
Radio Watch
Concert Tickets
Tickets to Dakota Events
T-Shirts Battle of the Bands
Concert Beachballs

His & Her

Interlocking Beer Mugs
Matching rings
Interlocking Pendants
Relationship Tips
Walkman with 2 Headphones
T-Shirts with Connecting Pictures
3 Earrings
Washable Tattoos
Double Sleeping Bags
Rate Your Lover Quiz

Car

Drink/Trash/Cassette Holder
Dash Picture Frame
License Plate
Mud Flaps
Window Toys
Car Mats
Bumper Stickers/Window Decals
Auto Shade
Classic Car Key Ring With Working Headlights
Key Ring With Car Charms
Cruising Party T-Shirt

Astrology

Slideguide & Book For Rising Signs
Dakota Tarot Cards
Guide to Comparing Signs for Relationships

Party

Mugs
T-Shirts
Party Games Book

Miscellaneous

V.F. Hot Spot Map
On-Pack Coupons for Stores and Events
Any Kind of T-Shirt
Money Clip
Wallet
Bank
Wrestling Noisemaker

Project VF
Recommended Next Steps

I. Overview

A. Marketing Objective

Replace Marlboro as brand of choice among YAFS.

B. Marketing Strategy

- Clearly position DAKOTA as exciting, contemporary and relevant brand choice via tightly targeted, extremely impactful, innovative communication of brand image.
- Impacts every marketing plan component:
  - OOH
  - Print
  - "Non-traditional" advertising
  - Premiums
  - Promotions
  - Field marketing
  - Point-of-sale/retail presence

Project VF
Recommended Next Steps

I. Overview

C. Brand Criteria

"Different" is not enough. To maximize appeal among target, brand must combine "stability" of Marlboro with sensation of unique, younger adult female image.

Each element must meet the following:

- Does it generate appeal among YAFS without alienating younger adult males?
- Is it unique (without being faddish) versus other cigarette brands?
- Does it effectively reinforce the Brand image?
- Is it consistent with a "big brand" versus a niche brand?

Bottom line: "Is it something Marlboro might do?"

Project VF
Recommended Next Steps

II. Product

A. Objectives

Provide target with product that performs such that move from Marlboro is not a tradeoff:

- Smoother taste

And/or

- Other "point of difference"

Project VF
Recommended Next Steps

II. Product

B. Current Product

- Current product differs from other RJRT entries:
  - Reduced G-7 and G-13 -> no "RJR signature"
  - More tobacco -> firmer -> less "loose ends"
  - Slower burn rate -> increased puff count (parity to Marlboro)
  - Improved appearance
    - Cigarette paper
    - Tipping paper
    - Tightly packed ends
    - Minimally reduced circumference -> less wrinkles

Project VF
Recommended Next Steps

II. Product

B. Current Product (Cont'd)

- Qualitative learning suggests current VF product is as good/better than Marlboro on identified basis:
  - Strength, taste, draw same as Marlboro
  - VF as smooth or smoother

- CPT results to confirm performance due week of October 30.

Project VF
Recommended Next Steps

II. Product

C. Product Development

Product "points of difference" examined include:

- High tar/slow burning product: Too strong, harsh; more development work necessary

- Wide circumference (FC): No perceived benefit; "felt funny" in target's hand

- Foil innerseal: No perceived benefit; explanation only confused consumers

- "Cuffs": Females interested, males were not; judged too gimmicky for VF

- Slide Box: Generated excitement, interest; perceived benefits (unprompted) include less mess and one-handed convenience

- CHELSEA Aroma: Judged inconsistent with brand's image niche rather than big brand, no unique point of difference should CHELSEA expand

- Enhanced Tobacco Aroma: Requires long-term (2+ years) development

PROJECT VF
RECOMMENDED NEXT STEPS

II. PRODUCT

D. RECOMMENDATION

- DEVELOP POINT-OF-DIFFERENCE PRODUCT FOR TEST MARKET INTRODUCTION AS SOON AS POSSIBLE:
  - SLIDE BOX
  - SLOWER BURNING (+2-4 PUFFS VERSUS MARLBORO)
  - OTHER

- IF CPT RESULTS POSITIVE, INTRODUCE VF IN STANDARD BOX CONFIGURATION IN JUNE. (POSTPONEMENT ENABLES 83HM INTRODUCTION.)

PROJECT VF
RECOMMENDED NEXT STEPS

II. PRODUCT

D. RECOMMENDATION (CONT'D)

- RATIONALE
  - "STANDARD" TEST PROVIDES BASE TO ASSESS INCREMENTAL IMPACT OF ADDED POINT OF DIFFERENCE VERSUS INCREMENTAL COST.
  - POINT OF DIFFERENT MIGHT ACTUALLY HURT VF PERFORMANCE:
    - NICHE RATHER THAN BROAD BASE
    - GIMMICKY/FADDISH
    - DEPARTURE FROM CURRENT HABITS/EXPECTATIONS
    - SENSATION/STABILITY BALANCE -- CIGARETTE CHOICE (MARLBORO) PROVIDES STABILITY
  - JUNE TEST PROVIDES USEFUL LEARNING, MINIMIZING LEAD TIME TO EXPANSION:
    - MARKETING MIX ELEMENTS
    - OVERALL VF POSITIONING/IMAGE (IF UNSUCCESSFUL, POINT OF DIFFERENCE WILL NOT BE ENOUGH)

PROJECT VF

II PRODUCT

E. TIMING

1. CURRENT PRODUCT

A. 79MM

	TIMING
FIELD CPT	COMPLETE
CPT RESULTS	w/o 10/30
TEST MARKET INTRODUCTION	04/02/90

B. 83MM

	TIMING
FIELD CPT	12/89
RESULTS	01/90
MANUFACTURING CAPABILITY (PACKER)	04/90
DTS*	06/04/90

* REQUIRES FF PRODUCT CROSS-TOWN TRANSFER AND COLD STORAGE THROUGH SEPTEMBER.

PROJECT VF

II PRODUCT

E. TIMING (CONT'D)

2. PRODUCT POINT OF DIFFERENCE

A. SLIDE BOX

	TIMING
LOCATE MACHINERY/PRELIMINARY INSPECTION	COMPLETE
NEXT STEPS	w/o 9/25
EARLIEST MAILOUT FOR EXTENDED USE TEST	11/89
RESULTS	12/90
PROJECTED MANUFACTURING CAPABILITY	07/90
DTS	09/03/90

B. "EXTRA PUFF" PRODUCT

	TIMING
BEGIN DEVELOPMENT WORK	COMPLETE
MAKE/ASSESS - ROUND I	11/89
MAKE/ASSESS - ROUND II	01/90
CPT MAILOUT	03/90
CPT RESULTS	04/90
EARLIEST DTS	07/90

Project VF
Recommended Next Steps

III. Advertising

A. Focus Group Learning

- Overall, campaign achieves desired communication points:
    - Independent, in control
    - Self-confident
    - "Real person"
    - Relaxed
    - Sociable
    - Would like to be and/or friends with
- Some refinements/revisions were recommended for introductory pool:
    - Cannot be too tough ... i.e., bitchy/cold (motorcycle jacket)
    - Cannot be too cute, giggly (barrel couple)
    - Woman cannot be too submissive (i.e., fawning at man who looks disinterested)
- Once brand image is established, we can explore greater extremes in individual executions.
- "Where Smooth Comes Easy" overwhelmingly best copy line.

Project VF
Recommended Next Steps

III. Advertising

B. Next Steps

- Visual pool approved.
- Develop innovative techniques to maximize campaign impact/communication:
    - OOH
    - Print
    - POS
    - Other

Mission

VF to achieve (1)

- 1.0% SOM and stable by week 26 DTS

  - 1.0% SOS
  - 80%+ PRS

- Competitive 18-49 smoker skew (130 Index)

- YAS skew (150 Index)

- Female YAS Marlboro skew (200 Index)

VF Prospect Prioritization	% of SOS Objective ([illegible])
(1) Female YAS Marlboro (200 Index)	(1)
(2) Competitive YAS (150 Index)	(2)
(3) 18-49 Competitive smokers (130 Index)	(3)
(4) Other smokers (80 Index)	(4)

VF Positioning	Degree of Appeal (7 point scale)	[illegible] %
(1) Female YAS Marlboro	8+	
(2) Competitive YAS	7+	
(3) 18-49 Competitive smokers	6+	
(4) Other smokers	5+	

OBJECTIVE

DEVELOP BASE OF SMOKERS (? SOS) FOR VF [illegible] [illegible]

- CREDIBILITY VIA WORD-OF-MOUTH ADVOCACY
- INTERMEDIARY [illegible] SUPPORT

(i) DIRECT MARKETING [illegible] SOS

- OWNERSHIP
- .5 SOS
- 20-30% OF MARKETING RESOURCES AGAINST [illegible] [illegible], I.E., COMPETITIVE SMOKERS/MARKET [illegible]

(ii) TARGET MARKETING

- SPECIAL RELEVANCE/DOMINANCE
- .3 SOS
- 15-20% OF MARKETING RESOURCES [illegible] YAS WITH PARTICULAR SPECIAL INTERESTS, ETC.

[illegible]
[illegible]

PROJECT VF PACKAGING TEST

OBJECTIVES

- ASSESS THE COMMUNICATION/APPEAL OF PROJECT VF PACKAGING
- PROVIDE INPUT INTO THE SELECTION OF AN APPROPRIATE COLOR FOR VF PACKAGING

METHODOLOGY

- Three Cell
- 150 Female Marlboro NM smokers, aged 18-24/cell (75 FF, 75 FFLT)
- 50 Male Marlboro NM smokers, aged 18-24/cell
- Prerecruit to central location
- Monadic evaluation of brand family packaging
- Color preference

PACKAGING ATTRIBUTES

Attributes (Agree)	Blue (150) %	Brown (150) %	Burgundy (150) %
Unique/Different	86	94	92
Attractive	88	84	88
Feel Comfortable Carrying	75	77	73
Friends Would Carry	63	66	61
High Quality	77	79	78
Modern/Contemporary	87	91	85

PACKAGING ATTRIBUTES VS. MARLBORO

	Blue (150)	Brown (150)	Burgundy (150)	Marlboro (450)
Attributes (Agree)	%	%	%	%
Unique/Different	86	94	92	48
Attractive	88	84	88	49
Feel Comfortable Carrying	79	77	73	86
Friends Would Carry	63	66	61	90
High Quality	77	79	78	84
Modern/Contemporary	87	91	85	67

USER IMAGERY

	Blue (150)		Brown (150)		Burgundy (150)
	%		%		%
Sex					
Mainly/Somewhat Male	32		41	←	28
Equally Male and Female	37		31		37
Mainly/Somewhat Female	31		28		35
Age					
Mainly/Somewhat Younger Adult	53	←	41	→	55
Equally Younger and Older Adult	28		31		29
Mainly/Somewhat Older Adult	19		27		16

USER IMAGERY

	Blue (150) %	Brown (150) %	Burgundy (150) %
Attributes (Agree)			
A person like you	65	65	65
A person who likes to make own decision	79	86	83
A traditional person	45	53	46
A person like your friends	67	66	61
An independent person	78	75	71

PRODUCT IMAGERY

	Mean Attribute Rating - Ideal TOTAL		
	Blue	Brown	Burgundy
Tobacco Taste	10	03	22
Smoothness	60	52	74
Strength	28	28	03
Mildness	11	37	22
Artificial Taste	1.09	99	77
Harshness	84	62	33

Significantly more than ideal (90% confidence level)
Significantly less than ideal (90% confidence level)

PRODUCT IMAGERY

	TOTAL		
	Blue	Brown	Burgundy
Non-Menthol	89	94	95
Menthol	10	5	5

---> Significantly different (90% confidence level)

PRODUCT IMAGERY

	TOTAL			FULL FLAVOR			[illegible]		
	Blue	Brown	Burgundy	Blue	Brown	Burgundy	Blue	Brown	Burgundy
Non-Menthol	89	94	95	90	92	94	89 --->	98	[illegible]
Menthol	10	5	5	10	8	6	11	2	1

---> Significantly different (90% confidence level)

PRODUCT PERCEPTIONS VERSUS MARLBORO

	Total			
	Blue		Brown	Burgundy
Better/Equal				
Quality	54	--->	70	66
Taste	58	--->	68	69
Smoothness	67		61	69

KEY MEASURES

	FEMALES		
	BLUE %	BROWN %	BURGUNDY %
PURCHASE INTENT			
TOP 2	45	41	46
TOP 3	71	74	81
THERMOMETER RATING			
75+	53	58	55
85+	86	87	[illegible]
PREFERENCE			
BLUE	49	51	53
BROWN	20	21	9
BURGUNDY	31	28	39

KEY MEASURES

	MALES		
	BLUE	BROWN	BURGUNDY
	%	%	%
URCHASE INTENT			
OP 2	38	42	44
OP 3	80	74	84
REFERENCE			
LUE	62	58	58
ROWN	14	10	14
URGUNDY	24	32	28

KEY MEASURES

	Female									Male		
	TOTAL			FULL FLAVOR			FFLT					
	Blue (150)	Brown (150)	Burgundy (150)	Blue [illegible]	Brown [illegible]	Burgundy [illegible]	Blue [illegible]	Brown [illegible]	Burgundy [illegible]	Blue [illegible]	Brown [illegible]	Burgundy [illegible]
	%	%	%	%	%	%	%	%	%	%	%	%
Purchase Intent												
Top 2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	38	42	44
Top 3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	80	74	84
Thermometer Rating												
% [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	—	
% [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—		
Preference												
Blue	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	62	58	58
Brown	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	14	10	14
Burgundy	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	24	32	28

☐ Significantly different at the 95% confidence level

CONCLUSIONS

- Design effectively communicates the desired product/user imagery.

- Relative to Marlboro, the Dakota packaging design is:

  - more unique
  - more attractive
  - more modern

- Reactions to color alternatives unclear:

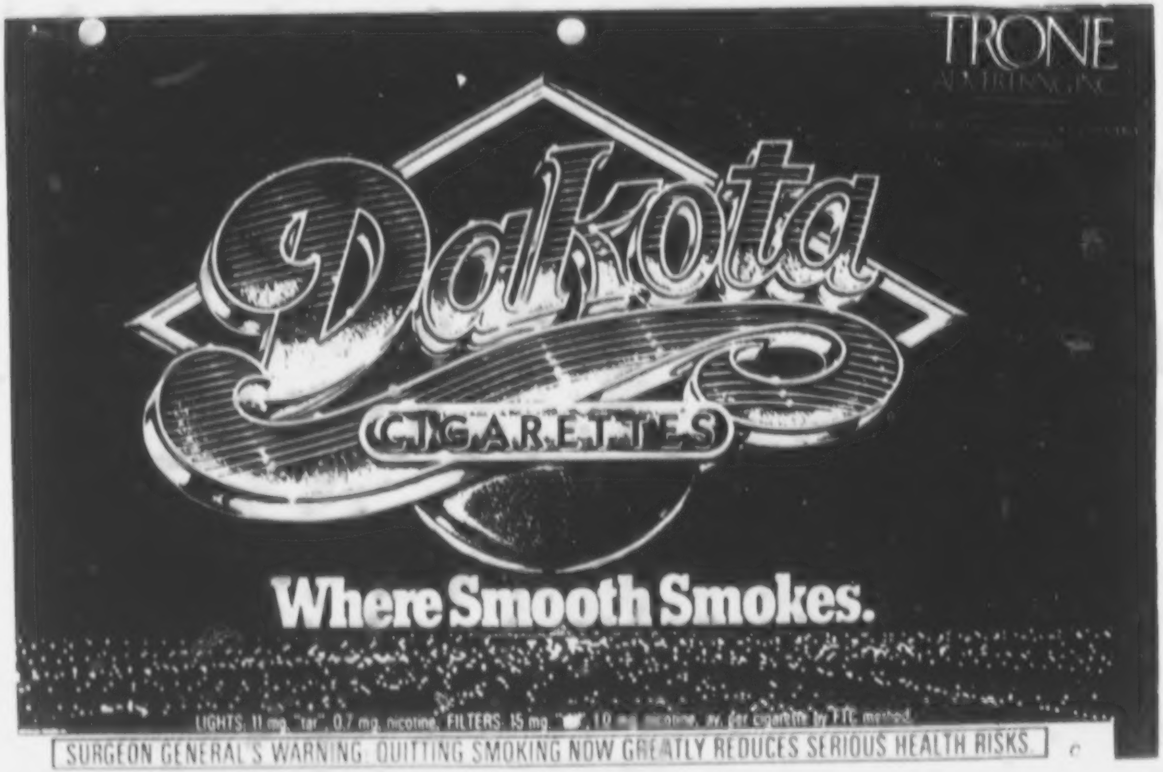
  Monadic ratings of "burgundy" show fewest weaknesses.

  "Blue" preferred overall

RECOMMENDATIONS

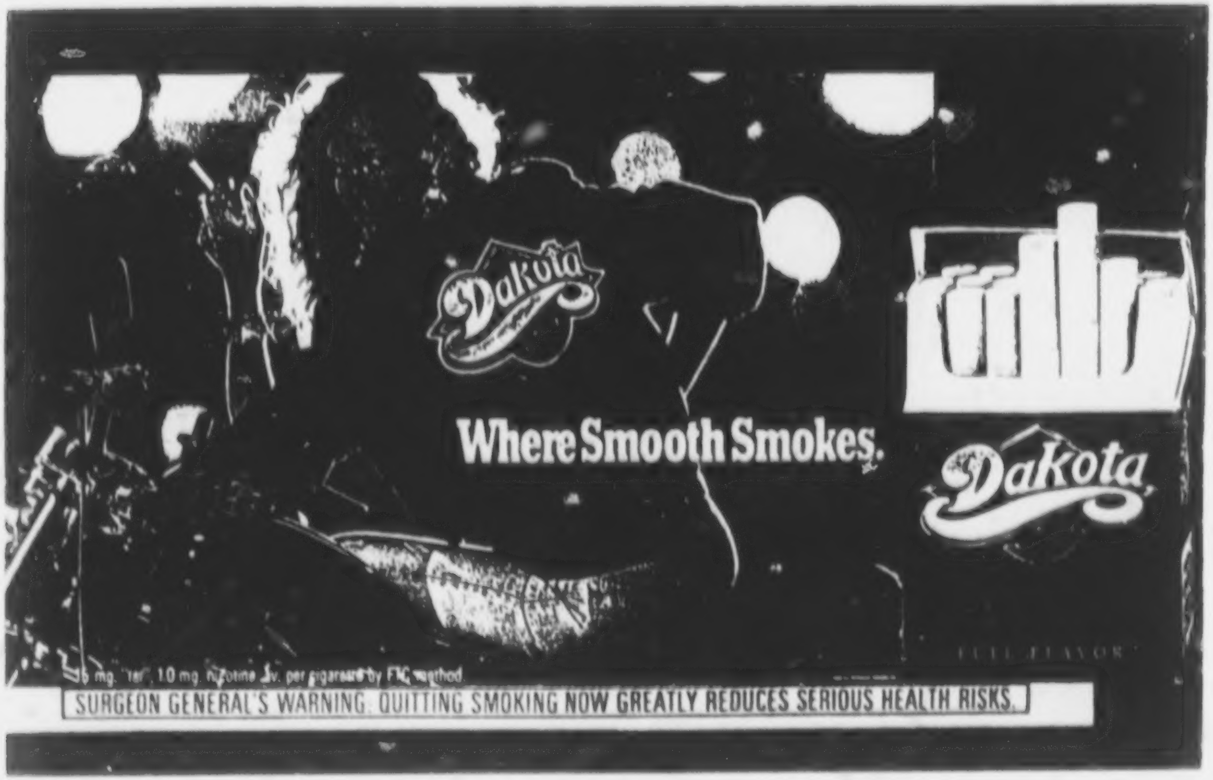
- The "blue" packaging offers an opportunity to communicate the desired image in a unique/impactful manner versus traditional cigarette packaging colors.

- Product/user perceptions associated with the packaging will be further enhanced by the Dakota advertising/product.


TRONE
ADVERTISING, INC.
Dakota
CIGARETTES
Where Smooth Smokes.

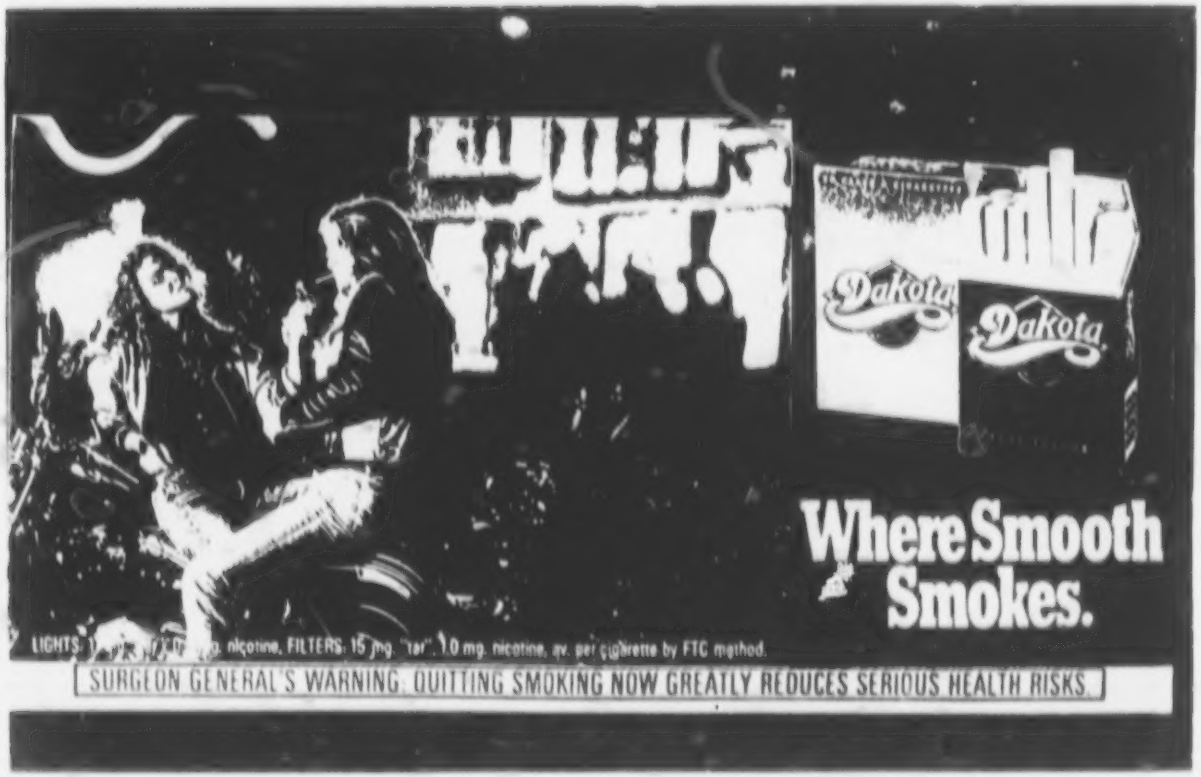
LIGHTS: 11 mg. "tar", 0.7 mg. nicotine, FILTERS: 15 mg. "tar", 1.0 mg. nicotine, av. per cigarette by FTC method.

SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS HEALTH RISKS.


Dakota
Where Smooth Smokes.
Dakota
FULL FLAVOR

[illegible] mg. "tar", 1.0 mg. nicotine av. per cigarette by FTC method.

SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS HEALTH RISKS.


Dakota
Dakota
Where Smooth Smokes.

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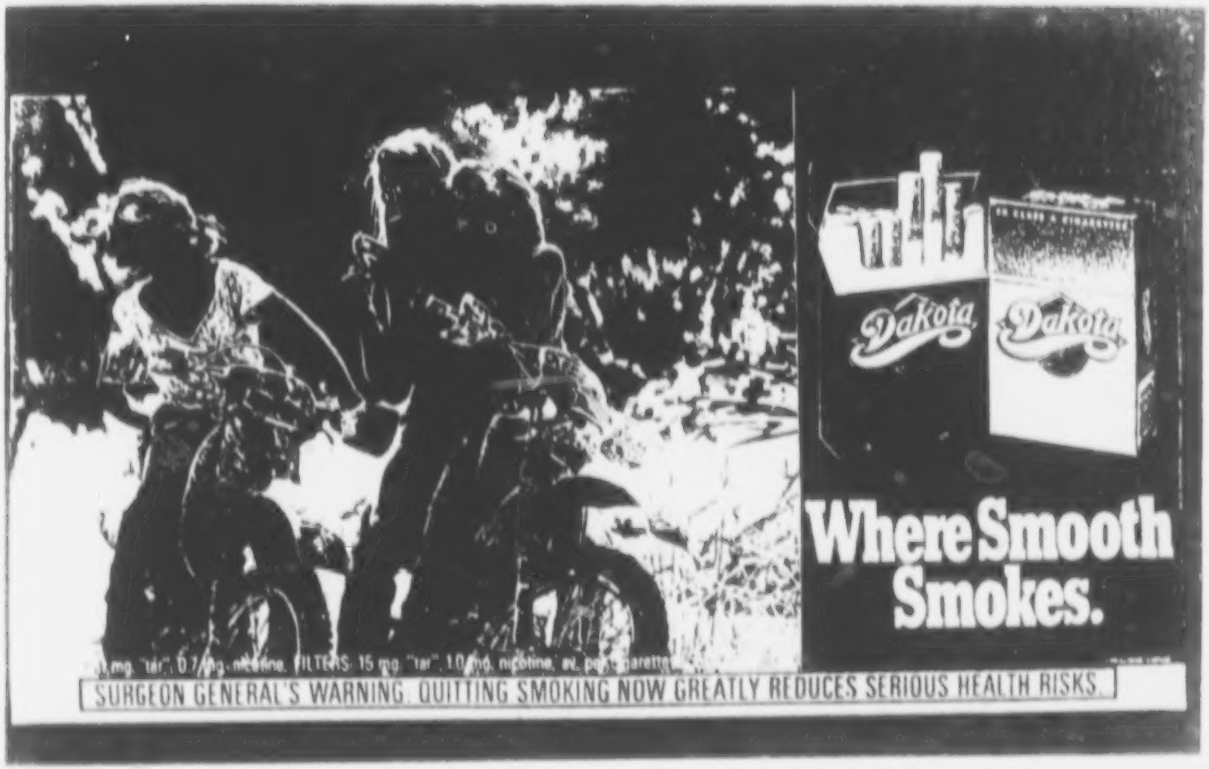
Dakota
Dakota
Where Smooth Smokes.

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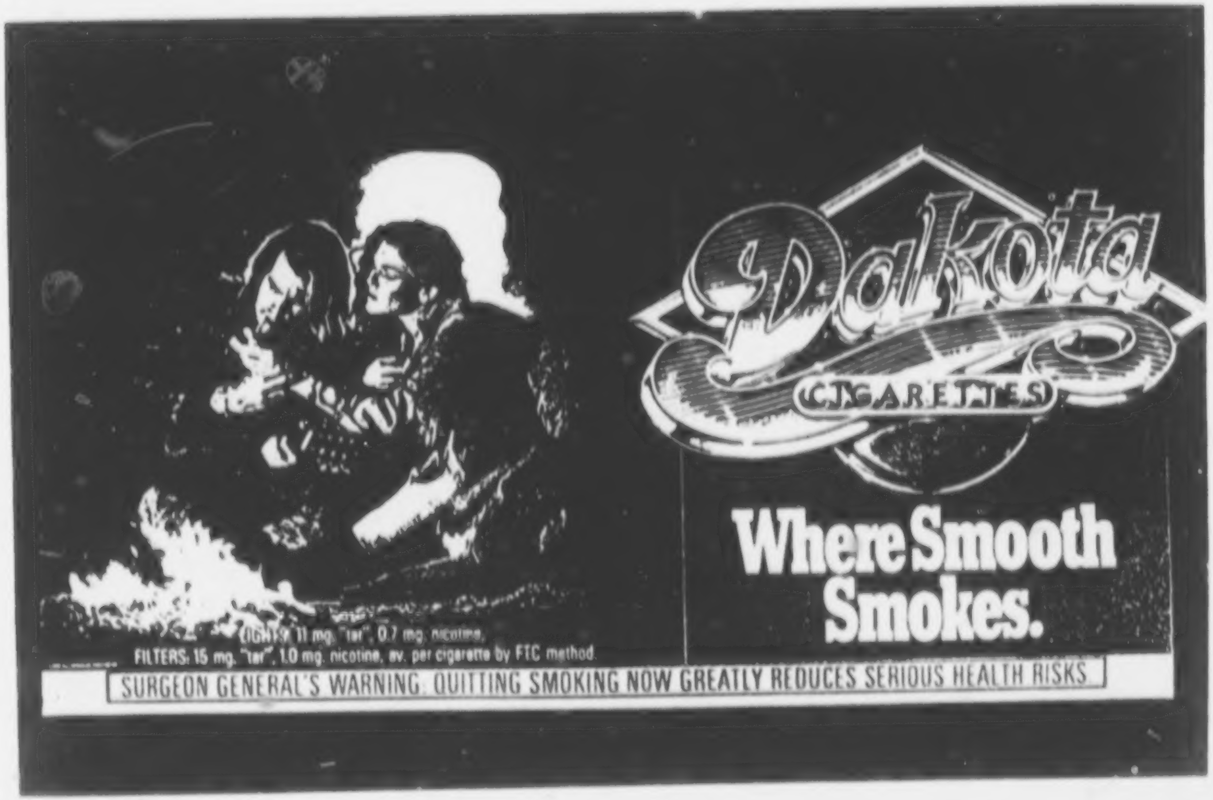

Dakota

CIGARETTES

Where Smooth Smokes.

LIGHTS: 11 mg. "tar", 0.7 mg. nicotine,
FILTERS: 15 mg. "tar", 1.0 mg. nicotine, av. per cigarette by FTC method.

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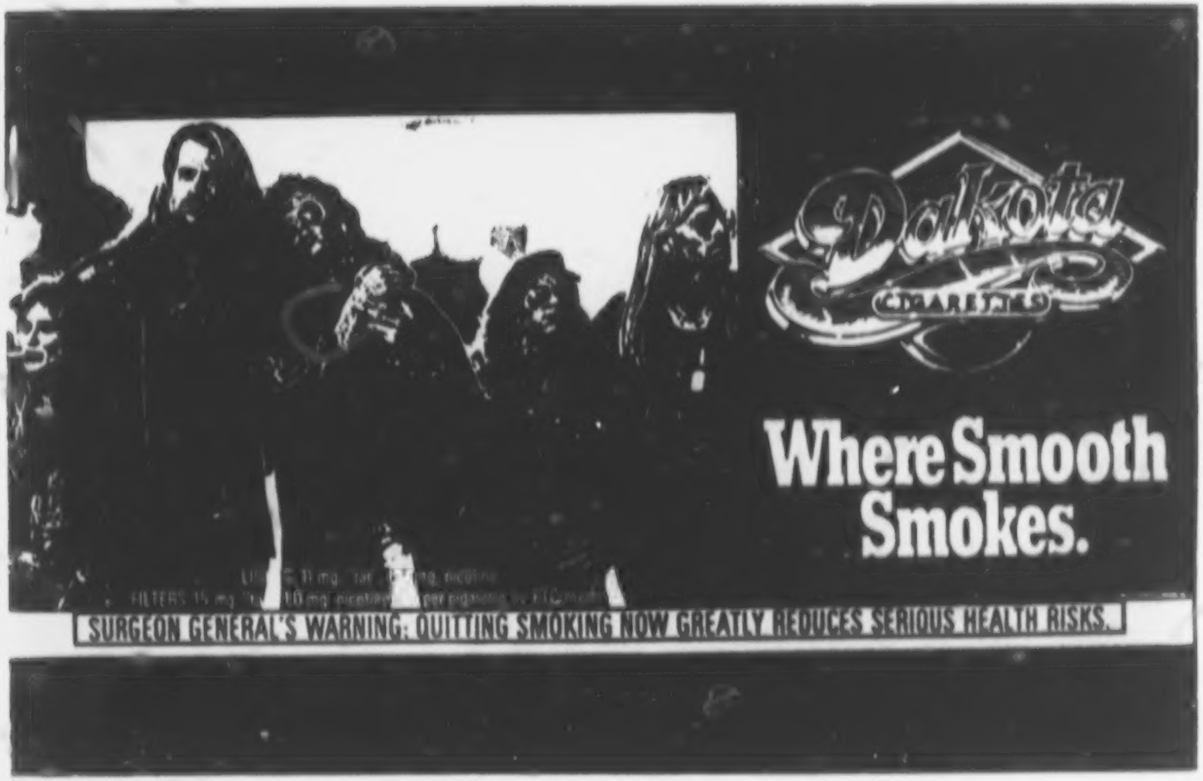
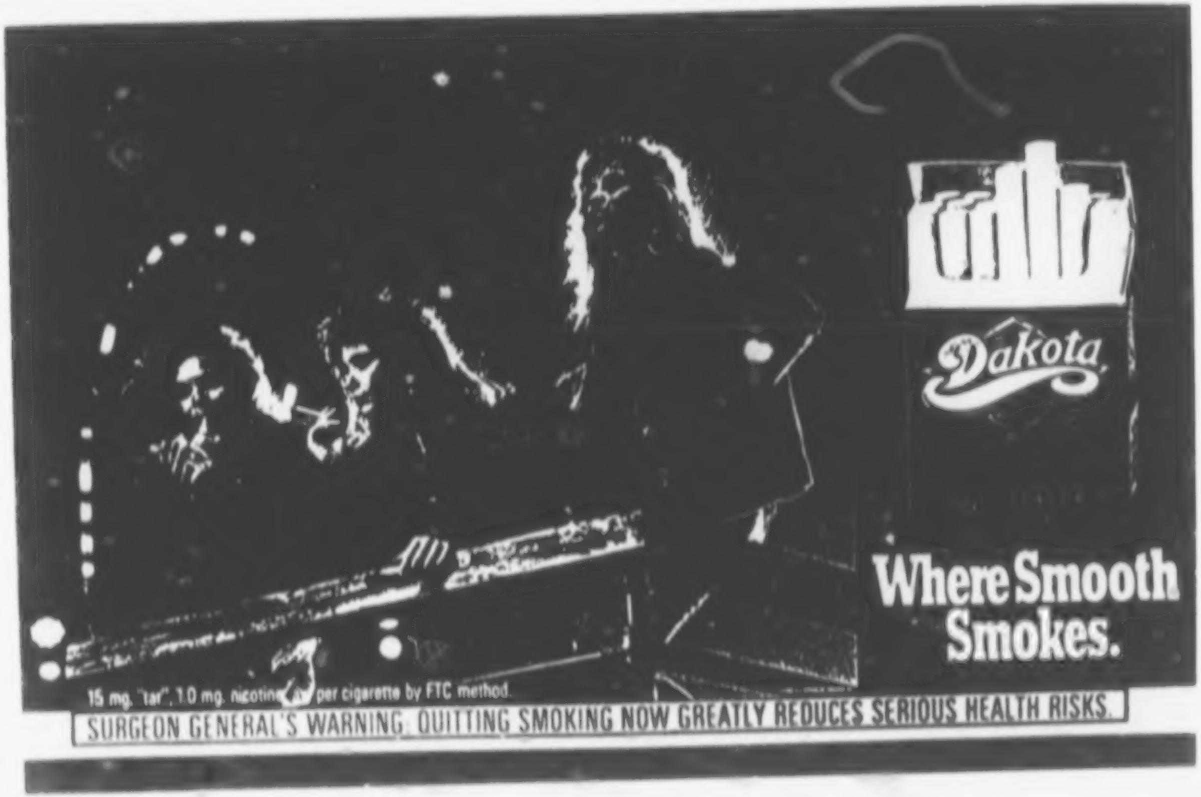


Where Smooth Smokes.

LI[illegible] 11 mg. "tar", [illegible] mg. nicotine
FILTERS 15 mg. "tar", 1.0 mg. nicotine [illegible] per cigarette by FTC method.

SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS HEALTH RISKS.


Dakota
Where Smooth Smokes.

15 mg. "tar", 1.0 mg. nicotine av. per cigarette by FTC method.

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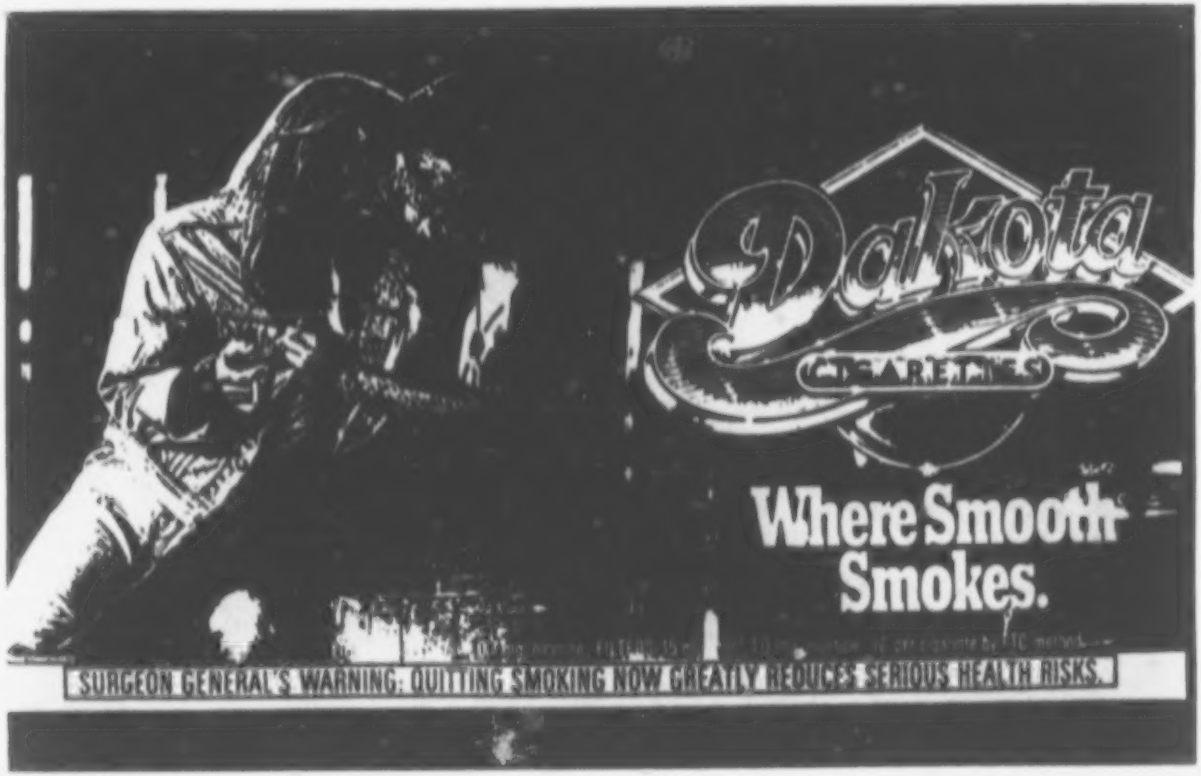
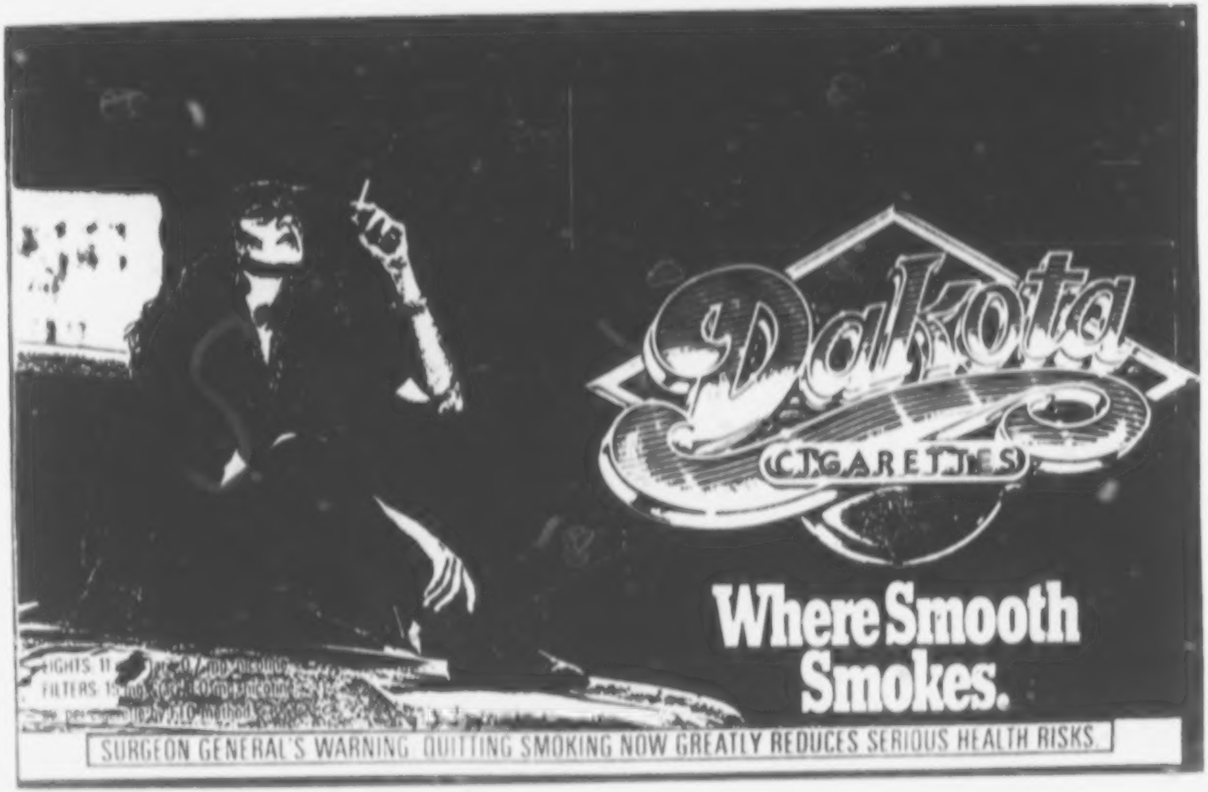

Dakota
CIGARETTES
Where Smooth
Smokes.

SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS HEALTH RISKS.



Dakota

CIGARETTES

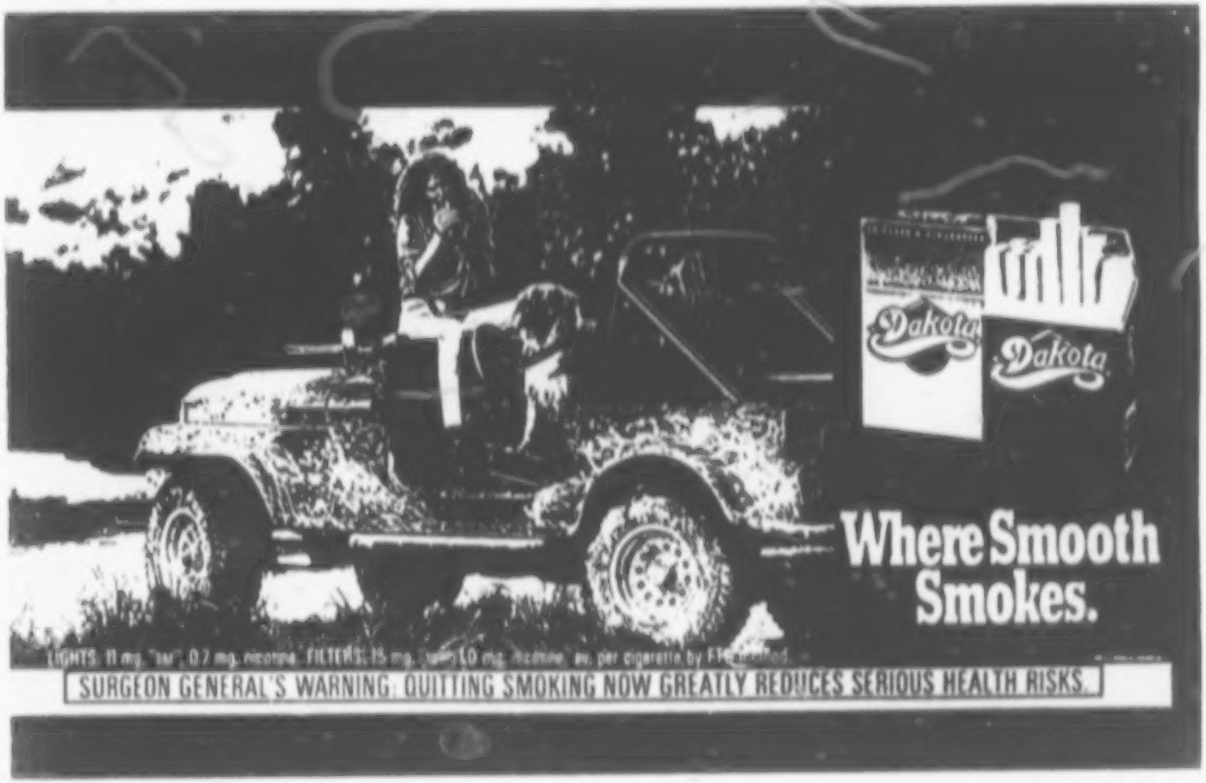
Where Smooth Smokes.

LIGHTS: 11 mg "tar", 0.7 mg nicotine

FILTERS: 15 mg "tar", 1.0 mg nicotine

av. per cigarette by FTC method.

SURGEON GENERAL'S WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS HEALTH RISKS.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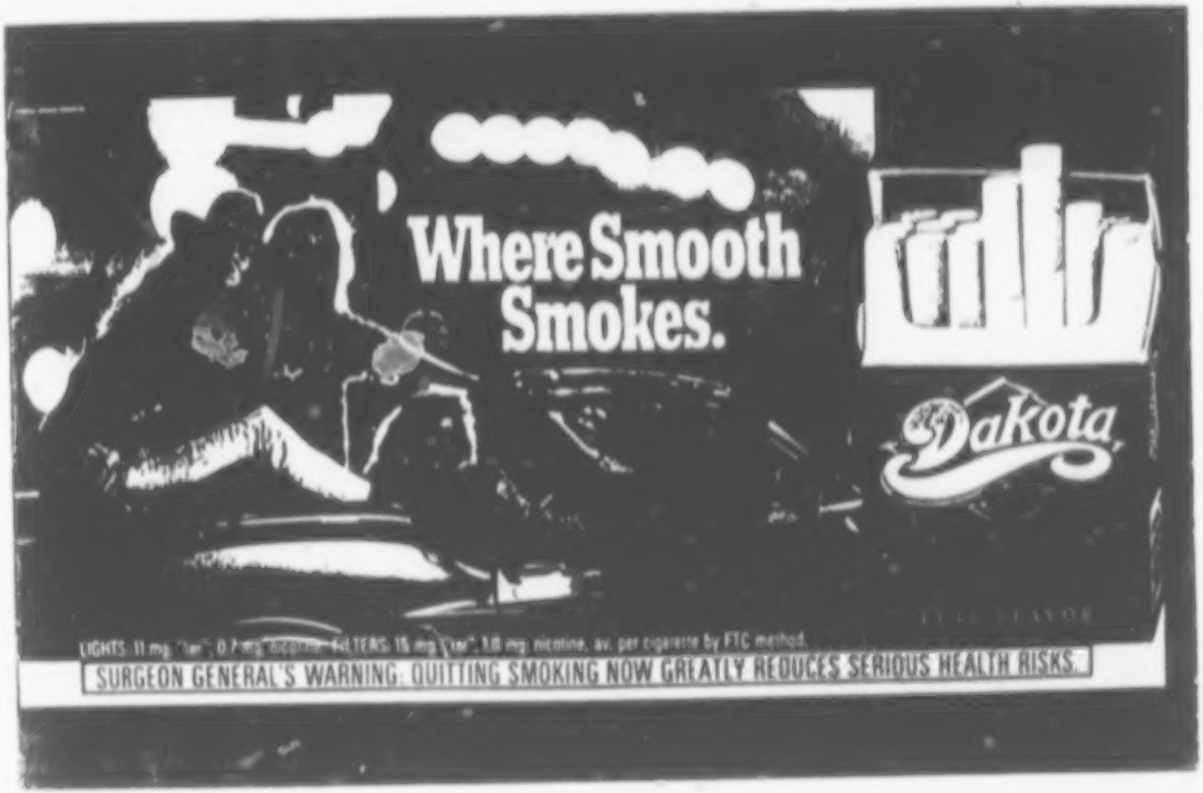
Where Smooth Smokes.
Dakota
FULL FLAVOR

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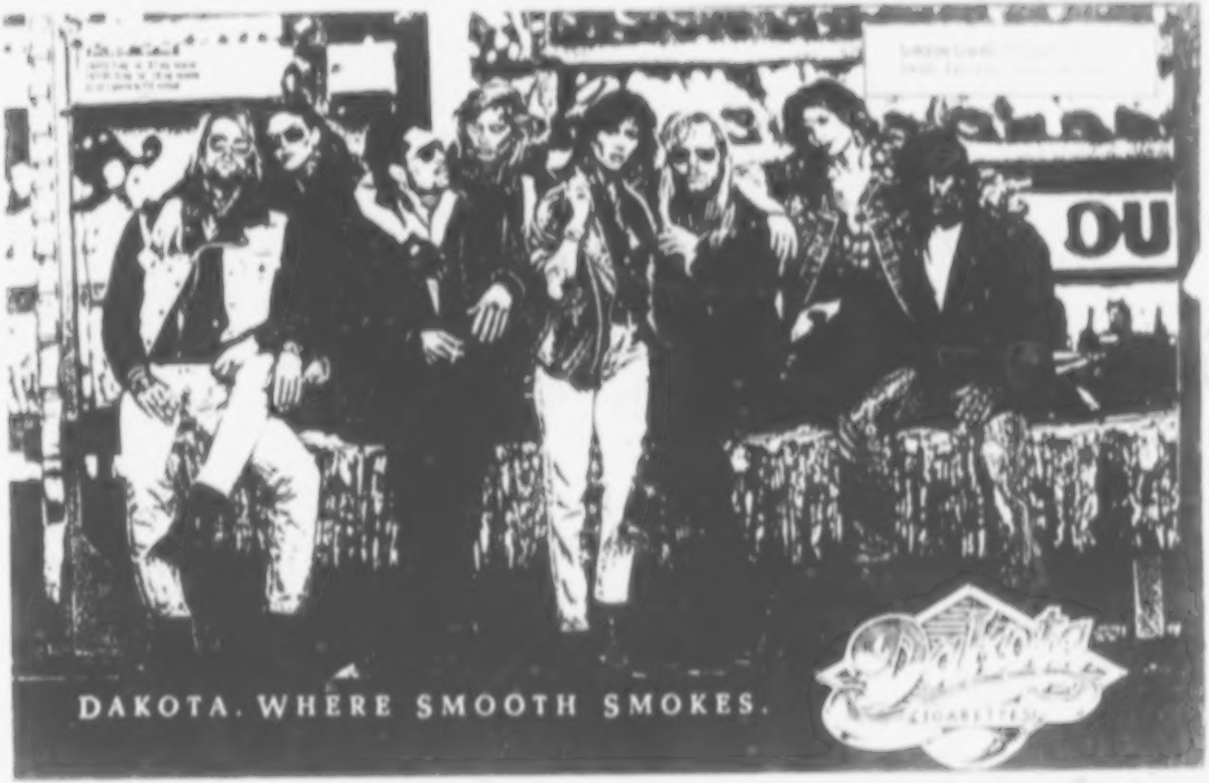
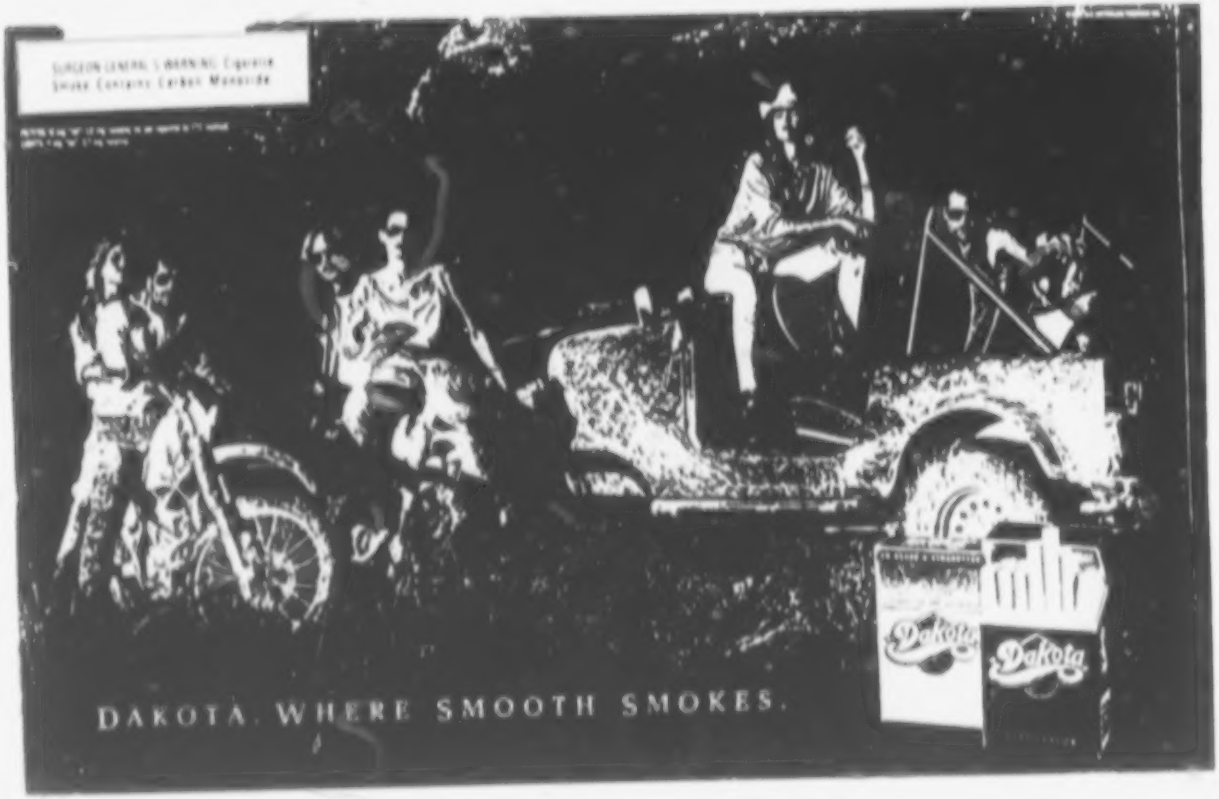

DAKOTA. WHERE SMOOTH SMOKES.
Dakota
CIGARETTES
OU



SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide

DAKOTA. WHERE SMOOTH SMOKES.

Dakota
Dakota

September 10, 1989

To: Ms. L.L. Bender

From: Ms. P.S. Cohen

Subject: Project VF-"Point-of-Difference"

The following will provide you with my perspective on the Project VF "Point-of-Difference".

BACKGROUND:
Project VF is being targeted against 18-20 year old female smokers of Marlboro. Learning to date suggests that, to maximize appeal among the target, the brand must combine the stability of Marlboro with the sensation of a unique younger adult female image. Several judgemental "yardsticks" have been developed to assess the ability of various elements of the marketing mix to meet the above objectives:

* Does the brand/marketing element generate appeal among younger adult females without alienating younger adult males?

* Is the image/marketing element unique (without being faddish) versus other cigarette brands?

* Does each marketing element effectively reinforce the brand image?

* Is each marketing element consistent with a "big-brand" as opposed to a niche brand (ie., Is this something that Marlboro would do?)

POINTS-OF-DIFFERENCE:
The same "yardsticks" should be applied when evaluating the appropriateness of product points-of-difference. Two differences which appear to be consistent with the above criteria are slow burn/increased puff count and the "slide" box. (Note: The current Project VF products offer increased puff count versus other RJR brands. Increases versus Marlboro will become viable as the 83mm

equipment comes on-line.)

An additional point-of-difference which has been proposed is incorporation of the Chelsea aroma. However, when evaluated against the Project VF "criteria", aroma appears to be inappropriate for the brand:

- Previous research suggests that aroma benefits appeal primarily to females, aged 25-34 who smoke 100mm products (See Attachment). Appeal among younger adult smokers, particularly younger adult males, is limited.

- Aroma ia a position which has been established (at least in test market) by Chelsea. Thus, it is not unique versus other brands.

- The use of aroma as a product point-of-difference on Project VF does not work in conjunction with other marketing elements to reinforce the overall brand image. As a result, it appears to be more of an "add-on" than a real benefit.

- Aroma benefits may be more consistent with a very targeted brand, rather than, a "big brand".

  -Share potential/viability for Chelsea remains uncertain

  -Judgementally, Philip Morris would be much more likely to incorporate aroma on Virginia Slims than on Marlboro.

RECOMMENDATION:
Given that any modification to the Project VF product will require a delay in the timetable, a two step test market plan is recommended:

- Evaluate the strength of the current proposition by proceeding to the inital test market in April, 1989.

- Continue to develop those points-of-difference which appear to offer the most potential for Project VF (ie., increased puff count and slide box) and evaluate the incremental potential via a second test market.

This recommendation will allow the Brand to proceed with the in-market development/refinement of current marketing elements (as recommended by the Delta Task Force) while ensuring that the potential for enhanced "points-of-difference" are also pursued.

Finally, it should be pointed out that the test market introduction of a new brand proposition where the primary point of difference is image-based is not unprecedented in the current marketing organization. To my knowledge, the product benefits provided by Project UT are quite similiar to those of Project VF. The key difference is providing a unique and relevant image versus other cigarette brands.

Perry
P.S. Cohen

	Total Smokers	Aroma Sensitive	Index
Male	51.2	37.2	73
Female	48.8	62.8	$\boxed{129}$
18-24	17.9	12.7	71
25-34	25.5	22.2	87
35-49	44.1	56.1	$\boxed{127}$
50+	12.5	9.0	72
Female			
18-24	13.3	11.4	86
25-34	28.8	37.5	$\boxed{130}$
35-49	42.9	36.4	84
50+	15.0	14.8	99
FF	43.4	40.5	93
LT	56.6	59.5	105
NM	67.9	68.6	101
M	32.1	31.4	98
85mm	53.4	44.0	82
100mm+	46.6	56.0	$\boxed{120}$

September 19, 1989

TO: Mr. J. Baggett

FROM: Ms. P. S. Cohen

SUBJECT: YOUNGER ADULT FEMALE SMOKING POPULATION

Per your request, I have determined the current total U.S. younger adult female Marlboro smoker population size:

Total Females, aged 18-24	14,968,532
X	X
Smoking Incidence	23.3%
X	X
Marlboro NM Share of Smokers	48.6%
=	=
Female Marlboro Smokers, aged 18-24	1,695,006

If you have any questions, please don't hesitate to call.

Penny

Penny S. Cohen
Business Information Department

PSC:sh

cc: L. L. Bender

Project VF Product/Manufacturing

Activity	Timing
• Field first CLT and QDA	Complete
• CLT results	Complete
• Field second CLT and QDA	Complete
• CLT results	Complete
• Final QDA results	Complete
• Determine next steps/point of difference development*	Complete
• CPT mailout	w/o 9/25
• CPT results	w/o 10/30
• Final product decision	w/o 11/17**
• Phase II production (produce 6M sales samples)	$\boxed{12/04/89}$ 1
• Specifications complete	01/08/90
• Begin production	$\boxed{01/29/90}$ 2

** No later than

☐ Denotes key dates in which any delays will impact other areas, specifically:

1 - Sales sample delivery
2 - Retail distribution

Project VF Packaging

Activity	Timing
• Focus group feedback (Baltimore)	Complete
• Review modified logo	Complete
• Review modified packs	Complete
• Field packaging test	Complete
• Packaging test results	Complete
• Pack chosen/approved	~~w/o 9/11~~ w/o 9/25
• Carton, tipping comps approved	~~w/o 9/18~~ w/o 9/25
• Final art/mechanical due	w/o 9/25
• Art/mechanical to Archer	10/02/89
• Trial run in Manufacturing	12/04/89
• Packaging/product receive R&D/QA approval	01/08/90
• Packaging materials at Manufacturing for start-up	01/22/90
• Manufacturing start-up	01/29/90

Project VF Marketing Research

Activity	Timing
• Advertising packaging and product focus groups (Baltimore)	Complete
• Field marketing/promotion focus groups (concepts only)	Complete
• Quantitative packaging test	
- Field	Complete
- Results	Complete
• Quantitative advertising communication test	
- Field	Cancelled
- Results	Cancelled
• Additional focus groups (Chicago)	Complete
- Advertising	
- Product point of difference	
- Promotion	
• Concept/product test	
- Field	w/o 9/25
- Results	w/o 10/30

Project VF Authorization Request

Activity	Timing
• Final product decision	11/17/89
• Product cost analysis received	w/o 11/27
• Cannibalization estimates received	w/o 11/27
• Financial analysis complete	w/o 12/11
• Route Authorization Request to reviewers	w/o 12/18
• Route Authorization Request for approvals	w/o 01/08
• Authorization Request approved	w/o 1/22

Project VF Sales

Activity	Timing
• Sales brochures, letterhead, direct account fact sheets, retail fact sheets and special prebooking forms arrive in Division Offices	01/15/90
• 6M gratis cases arrive in division, chain, regional and sales area offices	01/15/90
• Division Management meeting with Sales Representatives	01/22/90
• Begin selling direct accounts and chains	01/22/90
• Prebooking begins (including B1G1F)	01/22/90
• Carton/package facsimiles and package rack tags arrive in Division Offices	01/29/90
• First delivery date to direct accounts	03/02/90 (day of)
• Introductory discount period	3/2-30
• POS and field sales distributed coupons arrive in Division Offices	03/05/90
• First delivery of B1G1F product to direct accounts	03/23/90 (day of)
• OOH	4/90
• Down-the-Street	04/02/90

Project VF Advertising

Activity	Timing
• Review revised ad concepts	Complete
• Qualitative testing (Baltimore)	Complete
• Advertising shoot	Complete
• Qualitative testing (Chicago)	Complete
• Quantitative communications test	
- Field	Cancelled
- Results	Cancelled
• Final comp approval	11/06/89
• Art/mechanicals approved	11/20/89
• Mini-proofs approved	w/o 1/1
• Release OOH art/mechanicals	w/o 1/1
• Test post approved	w/o 2/5
• Begin final OOH production	w/o 2/19
• Sample post	w/o 3/5
• OOH arrives at posting plant	w/o 3/19

Project VF POS/Sales Materials

Activity	Timing
• Order stock for pack facsimiles, etc.	10/23/89
• Sales brochure comp approved	10/23/89
• POS comps approved	10/23/89
• Art/mechanical for sales brochure approved	11/13/89
• Art/mechanical for pack facsimiles, etc., approved	11/13/89
• Art/mechanical for POS approved	11/13/89
• Pack insert art/mechanical (if warranted)	12/11/89
• Ship sales brochures	01/08/90
• Sales brochures, letterheads at Division Offices	01/15/90
• 6M sales samples at Division Offices	01/15/90
• Carton/pack facsimiles and rack tags at Division Offices	01/29/90
• Ship POS	02/19/90
• POS arrives in Division Offices	03/05/90

MONTHLY STATUS SUMMARY

B. Project VF

Project VF is a new brand designed to replace Marlboro as the brand of choice among female smokers 18-24. Unlike Marlboro, VF will not be positioned as a "cigarette for men", but will reinforce target smokers' desire for traditionally "masculine" values. Development is proceeding to meet an April 2, 1990 test market DTS.

1. Product

Brand met with R&D to discuss adding a noticeable product/packaging "twist" to VF's proposition. Several ideas were discussed preliminarily, with a detailed idea generation session planned for w/o 8/7. Suggestions uncovered in this meeting will be prepared and presented for consumer feedback mid-September. Brand will present recommended next steps/timing later that month.

Concurrent with this exploratory, R&D will continue development of existing VF prototypes. Preliminary central location tests indicate several VF products perform at parity to Marlboro. Two additional CLT's are planned, with best performing products to be placed in full concept-product testing w/o 9/25.

2. Name

The law department is increasingly optimistic that ATC has no plans to use the "Dakota" name. As such, RJR should be able to obtain trademark rights in November when new laws go into effect. A back-up name search continues in the event that registration is denied.

3. Advertising

A full campaign shoot will be conducted next week (w/o 7/31), with photocomps brought to focus groups w/o 8/28 to ensure wardrobe, styling and casting are consistent with younger adult lifestyles/expectations. Focus group learning will guide introductory visual and poolout recommendations, which will be forwarded for management approval mid-September.

4. Packaging

Quantitative testing will be fielded w/o 8/7, with results due in early September. All packs carry the unique Dakota logo; however, three background colors (Blue, Brown, Burgundy) will be assessed to determine which best meets brand objectives. Recommended packaging will be forwarded for management approval w/o 9/11.

5. Marketing Plan

VF's strategic marketing plan will be forwarded in conjunction with 1990 annual plan presentations.

6. Key Timing

Latest dates to meet 4/2/90 DTS:

	W/O
● Quantitative Packaging Test - Field	8/7
- Results	9/4
● Packaging approved - Pack	9/11
- Carton/Tipping	9/18
● Advertising approved	11/6
● Final product decision	11/17
● Manufacturing start up	1/29/90
● DTS (test market)	4/2/90

GENE SHORE
ASSOCIATES
822 Montgomery Ave
Narberth, PA 19072
(215) 664 8012

September 5, 1989

Ms. Penny Cohen
Marketing Research Manager
R. J. Reynolds Company
401 North Main Street
Winston-Salem, North Carolina 27102

Dear Penny:

This letter is a summary of Project VF groups conducted in Chicago on August 28th and 29th, 1989.

A broad spectrum of attitudes among women to the advertising was noted, creating a range of positive, moderately enthusiastic, and negative reactions to the advertising. The advertising strategy must communicate the user image with a multi-faceted personality, such as independent yet approachable, sociable yet also enjoying her own company, feeling equal to men yet enjoying a warm fun relationship with a man.

Positive attitudes appear to occur among women who aspire to be independent, or to be a more contemporary woman, and have less traditional images of what is "Proper behavior" for a woman. Some of these women may be psychologically ready to become more independent, ready for the next phase of maturity and adulthood.

They admire the Dakota woman's independence, "Knowing her own mind," her versatility of enjoying the outdoors as well as carnival situations and street scenes, her willingness to be by herself or with a group or having fun with a man.

However, even these women need assurance she is approachable. They want to see that she can be friendly and smiling and not so independent that they could not aspire to be like her.

Negative reactions occur among women who do not aspire to the Dakota woman's independence, assertiveness, and control. Some of these women appear to have traditional values, leading them to feel less involved with her independence.

GENE SHORE
ASSOCIATES

Ms. Penny Cohen
September 5, 1989
Page 2

Some women with negative reactions may not yet aspire to the Dakota woman's independence and assertiveness. Being part of a social group, being accepted by others, and not yet "Doing their own thing" is still important to them. However, as they mature within the next few years, they could aspire to the Dakota woman's unique combination of independence, sociability, versatility, fun and contemporary sensitivity in her relationship with men.

Some of these women could be more likely to aspire to her earlier if they feel she is approachable, and not so independent and assertive that she would reject them and their (currently) more traditional, unassertive feminine values.

Some women perceive her as too sexy because of her direct body language positioning. A few perceive her as "A tomboy." The "Masculine" sort of way she handles her body, sitting first on a motorcycle with her boyfriend behind her, is inconsistent with traditional feminine values.

The moderate level of interest occurs among a few of the women who perceive the Dakota woman as "An outdoors women" who enjoys outdoor situations. Her informal clothing appears to reinforce this, especially in these situations. Her independence appears to be perceived mainly as related to her desire to be outdoors and active.

Overall, the Dakota woman appears to be perceived as an independent woman who has her own mind, and when presented in a variety of situations could also be perceived as sensitive, friendly and warm, yet retaining her unique contemporary independence. In addition to appealing to some women immediately, she could be an aspirational figure for other women who may initially be unable to relate to her, but aspire to her psychological strength and independence as they mature.

Initial advertising should create a multi-faceted image of the Dakota woman. It should include executions which show her independence, her sociability with other women friends, her warm and sensitive relationship with a man, and communicate that she can also be friendly and approachable.

Her informal clothing, such as jeans, Western hat in one picture, can be seen as only Western in outdoor rugged situations, and should be counter-balanced by city scenes, a carnival, or other scenes to avoid her being perceived as merely a feminine copy-cat of the Marlboro Man.

A key issue in her appeal appears to be the combination of specific advertising executions which are used. Perceiving her as unique, because she is independent, yet enjoying a relationship with a man, as being able to be by herself yet enjoying situations with her friends, creates a unique image.

The complexity of this total communication indicates that the advertising which is used to introduce her should be researched to evaluate its effectiveness in creating the desired image. Since the components combination of image appear very important, the advertising research should evaluate the portfolio of images which are used to create the total image which makes the Dakota woman aspirational and creates the desired motivational compellingness which could appeal to contemporary women.

The man in some executions also plays a key role. He should appear strong and unique also, in addition to being attractive and aspirationally appealing. His down-to-earth ruggedness makes him uniquely interesting, but he should also appear "Decently groomed," even though his total manner is informal, independent, and the kind of man who also likes to do "His own thing." His independence should not overshadow the Dakota woman's independence. It should indicate she likes a strong man, yet they have a sensitive relationship between them.

GENE SHORE
ASSOCIATES

Ms. Penny Cohen
September 5, 1989
Page 4

The product used in these groups appears to be extremely appealing. Many of the women feel its taste and satisfaction is comparable to their current brand and it has the additional benefit of being smoother.

Promotions, inserts and other interest-stimulating devices should be considered very carefully. They should be consistent with the unique image of the Dakota woman, especially in the introduction when her image is being established.

I hope these observations are useful, and if I can be of any further service, please contact me.

Sincerely.

Gene

Gene Shore, Ph.D.
President

GS:mm

0550R

RJR Interoffice Memorandum

DATE: September 20, 1989

TO: L. L. Bender **FROM:** C. R. Carpenter

SUBJECT: VF Product Development -
Increased Puff Count

The following is a summary of our product development plan to produce VF prototypes with increased puff count for potential third quarter, 1990 test market introduction.

Prototypes that are currently being fielded in the VF Concept/Product Test in preparation for April, 1990 DTS have the following analytical values:

FFLT			FF		
	Puff Count	'Tar'		Puff Count	'Tar'
CT 1895 A	8.8	10.8	CT 1896 A	8.2	16.6
CT 1895 B	8.4	12.2	CT 1896 B	8.1	16.1
Marlboro Lt. 83 CPB	8.0	10.7	Marlboro 79 CPB	8.7	16.8

As you can see, our FFLT prototypes have as much as .8 puffs more than Marlboro Lt. and FF prototypes are as much as .6 puffs fewer than Marlboro. The VF prototypes are already at a puff count advantage versus our established brands CPB products which currently range from 6.6 to 7.6 puffs. During VF product development, we incorporated most of the puff count increase options that the established brands are now using to improve products, always attempting to maintain equal taste delivery to Marlboro. By elimination of G13 in one blend, we were able to increase puff counts to 8.8 and 9.5 on FFLT and FF prototypes, respectively. However, these prototypes were not pursued further when VF focus group respondents perceived the products to be too light and lacking tobacco taste. Low levels of G13 and G7 (low density components) along with increased tobacco weight were the primary contributors to increased puff count in VF products. Also, contributing were the inclusion of G7-10C (G7 with DAP) and slow burning cigarette paper. By balancing all of these variables, we developed acceptable prototypes.

In an effort to increase puff count further, we plan to use the same variables and push them to the limit. Density will be further increased by increasing tobacco weight more and eliminating G13. In addition, cast sheet, which is a very dense component, will be evaluated. Cast sheet was not considered for initial VF development because of the project timeframe and lack of a cast sheet production facility. Implementation of cast sheet by third quarter, 1990 remains highly questionable. The only production facility available is an outside company called Nuway. Our first run on their cast sheet line will be conducted in the next few weeks. It is not certain whether the same material can be produced. Cigarette papers can be used to modify product burn rate substantially by changing porosity and levels of burn additives. Currently, I have six different cigarette papers on hand that will increase puff count to varying degrees. Since tar levels will increase significantly with these papers, the filter and ventilation system will have to be changed. All prototypes will be produced in 83 mm length which is accompanied by a circumference reduction from 24.70 to 24.40 mm. Because prototypes like these have never been made, it may take several product development tests to achieve an acceptable product. Initial development will be done on FFLT only until our options are screened down to a more workable number.

Our best guess on project timing is outlined below. Since learning will be built incrementally it is difficult to project how many tests will be needed and more importantly when a consumer test might be feasible.

	Timing	
First product development test - density, cigarette papers, cast sheet	Make	11/6/89
	Analyticals	11/17/89
Qualitative research		11/27/89
Second round of prototypes	Make	1/8/90
	Analyticals	1/19/90
Qualitative research		1/22/90
Concept/Product Test	Mailout	3/12/90
	Results	4/23/90

This schedule allows for only two product development tests prior to consumer testing. It is risky to assume that only two tests are needed since the product changes needed to increase puff count by as much as two puffs are considered fairly radical. This schedule also provides for no internal QDA evaluations and only two rounds of qualitative. The purpose of qualitative research will be to determine if consumers perceive a difference in puff count and if product taste is acceptable. Obviously the timing listed here is tentative and up for discussion. It is unlikely that the first prototypes could be made before 11/6/89 and quite possible that it could be later. The pilot plant schedule in October is extremely cluttered with mailouts and product development tests receive lower priority.

Please call if you have questions on this development plan.

Project VF
Recommended Next Steps

II. Product

D. Recommendation (Cont'd)

- Rationale
  - ~~April~~ June test provides useful learning, minimizing lead time to expansion:
    - Marketing mix elements
    - Overall VF positioning/image (if unsuccessful, point of difference will not be enough)
  - April test provides base to assess incremental impact of added point of difference versus incremental cost.
  - Point of different might actually hurt VF performance:
    - Niche rather than broad base
    - Gimmicky/faddish
    - Departure from current habits/expectations
    - Sensation/stability balance -- cigarette choice (Marlboro) provides stability

Project VF

II. Product

E. Timing

1. Current Product

	Timing
Field CPT	w/o 09/25
CPT results	w/o 10/30
Test market introduction	4/90

2. Product Point of Difference

A. Slide Box

Locate machinery/preliminary status	Complete
Machinery inspection	09/18/89 week of 9/25
[illegible] Conduct limited run for testing	10/89
Extended use test results	11/89
Machinery shipped (if warranted)	10/89
Machinery arrives in Manufacturing	12/89
Manufacturing capability	TBD
Test market introduction	3rd Qtr. '90*

B. "Extra Puff" Product

Begin development work	Complete
BID/R&D development plan forwarded	w/o 09/18
Test market introduction	3rd Qtr. '90*

* Or sooner

Project VF
Recommended Next Steps

II. Product

- DELTA found no current alternatives judged viable by VF target. DAKOTA provides first alternative.

- We have never introduced cigarette with "non-RJR" signature. Previous failures may be due to taste deficiencies not present with DAKOTA.

- Above all, target wants good tobacco taste and smoothness.

- Other product categories have succeeded with image-only positioning:

  - Charlie Cologne
  - Coors Beer
  - Absolut Vodka

III. Advertising

A. Focus Group Learning

- Overall, campaign achieves desired communication points:

  - Independent, in control
  - Self-confident
  - "Real person"
  - Relaxed
  - Sociable
  - Would like to be and/or friends with

- Some refinements/revisions were recommended for introductory pool:

  - Cannot be too tough...i.e., bitchy/cold (motorcycle jacket)
  - Cannot be too cute, giggly (barrel-couple)
  - Woman cannot be too submissive (i.e., fawning at man who looks disinterested)

- Once brand image is established, we can explore greater extremes in individual executions.

- "Where Smooth Comes Easy" overwhelmingly best copy line.

B. Next Steps

- Visual pool approved.

- Develop innovative techniques to maximize campaign impact/communication:

  - OOH
  - Print
  - POS
  - Other

PROJECT VF QUALITATIVE RESEARCH - CHICAGO
(BID #89-43613)

PURPOSE:

This report summarizes learning from the Project VF qualitative research conducted in Chicago, IL on August 28 - 29, 1989.

OBJECTIVES:

- Explore the communication/appeal of the Project VF introductory advertising.
- Explore reactions to other elements of the Project VF marketing mix:
    - Product
    - Promotion
- Explore alternative means for providing Project VF with a unique, yet meaningful, point of difference.

METHODOLOGY:

A detailed methodology and summary of stimulus materials are provided in the attachments.

CONCLUSIONS/RECOMMENDATIONS:

The Project VF advertising appears to convey the desired product/user imagery. Importantly, learning from this research, in combination with management judgement, suggests that the appeal of the "Dakota Woman" may be enhanced through careful selection/development of the executional mix. Specifically, the campaign should incorporate executions which reinforce that, although the "Dakota Woman" is extremely independent, she is also approachable and friendly.

NEXT STEPS:

Quantitative assessment of the Project VF advertising will be incorporated in the Concept/Product test fielded September 25, 1989. Results will be available the week of October 30, 1989.

HYPOTHESES EXPLORED/GENERATED:

I. Advertising

- The Project VF campaign will convey the underlying strength of the Marlboro image while providing a unique younger adult female positioning/imagery versus Marlboro.

  Both male and female respondents described the Dakota woman as attractive, and a "woman of the 90's". In addition, she appears to share many positive traits with the Marlboro cowboy - she was frequently described as independent, her own person, confident, and in control (yet easygoing). Importantly, many respondents believed she conveyed a fun-loving rebellious nature that they could easily identify with and, for some, aspire to.

  Respondents who found the "Dakota Woman" unappealing tended to ascribe negative traits to her attitude and independence by referring to her as aloof, unfriendly, snobbish, and "easy".

  Observation of consumers and their reactions to the "Dakota Woman" suggests that those with more confident/outgoing personalities viewed the advertising more positively. In contrast, more conservative/introverted respondents may have felt somewhat threatened by the strong personalities conveyed in this advertising.

- The most appealing headline(s) will clearly convey the correct product/user imagery in a unique manner:

  Of the headlines explored, "Where Smooth Comes Easy" appears to offer the most potential for Project VF. Respondents suggested that this line clearly describes the attitude/personality of the "Dakota Woman" while at the same time indicating an extremely smooth product.

  Other headlines were often rejected for a variety of reasons:

  - No clear meaning
  - Fit only with selected executions ("Come together smooth", "Smooth. Streetwise", "Smooth Revolution")
  - Suggest a harsh product ("Smooth Action. Slow Burn.")
  - Obvious/overt use of younger adult language/slang ("Where Smooth Smokes.")

II. Product

The Project VF prototypes which will be included in the upcoming Concept/Product test were exposed to respondents in these groups.

- Project VF prototypes will provide a product delivery which is perceived as comparable Marlboro:

  Overall reactions to the Project VF prototypes were generally positive. Both full flavor and FFLT smokers described the products as smooth, not harsh, and similar in taste to Marlboro. Unlike previous qualitative, there were no mentions of "hard draw" associated with the denser pack of these prototypes.

III. Unique Packaging

In an effort to provide a further "point of difference" for Project VF, two unique packaging alternatives (slide box and sealed inner liner) were also explored in these groups.

- Unique packaging alternatives can provide an appealing and meaningful point-of-difference.

  Respondent reactions to the "slide-box" were extremely positive. Almost all respondents described it as unique and different. Importantly, several smokers indicated that rather than being "just a gimmick" the slide box design would provide the benefit of "keeping tobacco from spilling out in your purse".

  In contrast, respondents saw little or no benefit to the "sealed inner-liner". In fact, most were confused by this design since they believe that adequate freshness is ensured with the current use of cellophane.

IV. Promotion

Although only limited time was available to explore promotion alternatives, respondents were exposed to a mall oriented promotion program and a variety of packaging onsert alternatives. Although reactions to these promotions were generally positive it should be noted that they provided little or no reinforcement of the image conveyed by the Project VF advertising.

ATTACHMENT

METHODOLOGY

- Five Focus Groups:
  - 4 groups of Female Marlboro MM smokers, aged 18-20.
  - 1 group of Male Marlboro MM smokers, aged 18-20.
  - Selected respondents had completed no education beyond high school.
- Moderator: Dr. Gene Shore
- Stimulus:
  - Project VF Advertising Campaign (C-Prints)
  - Headline Alternatives (shown simultaneously on white card)
  - Project VF prototypes (2 - FF, 2 - FFLT)
  - Unique packaging incorporating Dakota graphics

TO: Laura Bender
FROM: Natalie Perkins
cc: Don White
Ron Irons
Angelyn Honton
Lee Trone

DATE: September 20, 1989

RE: Advertising Budget

Attached is a detailed description of all the VF Projects to date. I have also included amount of the approved estimate, and how much of the project has been invoiced to date. I used actual invoice amounts when available, otherwise I worked with the estimate amount. According to my calculations, these projects can be summarized as follows:

VF401	Agency Retainer	$450,000.00

ADVERTISING

RJ7280	Ad Concepts Phase I	$12,671.50
VF400	Ad Concepts Phase II	354,440.56
VF409	Final Ad Comp Assembly	49,517.37
VF412	Final Ad Photo Shoot	88,010.87
VF413	Ad Shoot Pre-Production	84,080.95
VF414	Model/Talent Shoot Fee	*82,000.00
VF418	Second Casting/Shoot Overages	*38,964.32
VF419	Ad Still Life Photo Shoot	7,637.97
VF430	Talent Test Usage Fee	*18,000.00
VF425	Final Comp Revisions	*25,078.23
VF427	VF High Impact Ad Concepts	*17905.43
	TOTAL	$778,307.20

PACKAGING

RJ7279	Name/Pack Exploratory	$12,671.50
VF402	Pack Logo/Background Exploratory Phase I	20,719.11
VF404/ VF407	Pack Logo/Background Exploratory Phase II	30,518.49
VF405	Pack Final Art Mechanical	*38,000.00
VF406	Alternate Name Exploratory	-0-
VF408	Pack Background Refinements	10,532.16
VF410	Barrel/Tipping Design Exploratory	5,000.00
VF411	Pack Background Exploratory	14,036.27
VF415	Pack Comps for Testing	21,935.90
VF416	3-D Barrel/Tipping Comp Exploratory	7,659.17
VF417	Pack Logo Refinement	*2,895.95
VF423	Packaging Options	1,530.00
	TOTAL	$165,498.50

PROMOTIONS

VF403	Promotion Concepts Phase I	$15,172.28
VF421	Promotion Concepts Phase II	5,446.84
	TOTAL	$20,619.12

MISCELLANEOUS

VF424	CPT Test Prints	$5,215.42
VF426	VF Team Appreciation Awards	TBD

*Estimated cost.

Laura, please call me if you have any questions or comments.

September 20, 1989

VF BUDGET

JOB #	JOB NAME/DESCRIPTION	ESTIMATE	INVOICED TO DATE
RJ7279	**Name/Pack Exploratory** Initial exploratory of 40 pack backgrounds and 40 names to be tested by groups in Phil.	$13,720.00	12,671.50
RJ7280	**Ad Concepts Phase II** Initial exploratory of 120 advertising concepts to be presented to groups in Atl.	360,745.00	354,440.96
VF400	**Ad Concepts Phase II** Additional exploratory and refinements to 50 ad concepts to be reviewed by groups in Baltimore.	91,785.00	91,785.17
VF401	**Agency Retainer** Monthly agency advertising retainer for period (April-December).	450,000.00	450,000.00
VF402	**Pack Logo/Background Explor. Phase I** Pack logo/background exploratory of 40 different flat 200% comps to be presented to client.	20,610.00	20,719.11
VF403	**Promotion Concepts Phase I** Production of 50 color marker promotion/field marketing/ premium comps to be reviewed by groups in Philadelphia.	14,482.18	15,172.28

VF404/ VF407	**Pack Logo/Background Explor. Phase II** Continued exploratory of pack background colors and simplification of current logo to be used on pack. Tested by groups in Baltimore.	31,083.40	30,518.49
VF405	**Pack - Final Art/Mechanical** Production of final art and mechanicals electronically for packs and cartons (two styles), and barrel/tipping art and mechanical. Includes buyout on logo and two sets of prototype packs/cartons.	38,000.00	-0-
VF406	**Alternate Name Exploratory** Additional exploratory for back-up names to Dakota (internal time only.)	-0-	-0-
VF408	**Pack Background Refinements** Refinements to pack background colors using simplified logo.	11,111.00	10,532.16
VF409	**Final Ad Comp Assembly** Costs for assembling all comps (40) for testing in Chicago - all type, color prints, stats, etc. included. Includes travel for 4 agency people for 3 days.	65,465.40	49,517.37
VF410	**Barrel/Tipping Design Explor.** Color marker exploratory of barrel/tipping design (49 comps).	5,000.00	5,000.00
VF411	**Pack Background Exploratory** Final pack background exploratory in the six selected colors (18 comps).	13,577.85	14,036.27

VF412	**Final Ad Photo Shoot** Six days of shooting ad concepts in LA. Includes photographer fee, costs of crew, insurance, special effects and location fees.	88,638.00	88,010.87
VF413	**Ad Shoot Pre-Production** Pre-production, casting, location scouting, wardrobe make-up & hair consulting & travel for 3 agency people to attend 3 day casting session.	85,553.50	84,080.95
VF414	**Model/Talent Shoot Fee** Payment of all models (5 hero models, 5 secondary models and hand & body models). Includes travel expenses for out of town models.	93,900.00	*32,770.94
VF415	**Pack Comps for Testing** Refinements & printing of 40 flat comps of each of six different designs for a total of 240 comps to be used in quantitative testing.	20,103.25	21,935.90
VF416	**3-D Barrel Comp Exploratory** 3-D comps of selected barrel/tipping art designs for two styles in various colors (117 comps).	7,842.51	7,659.17
VF417	**Pack Logo Refinement** Testing of pack logo on Scitex for RJR printing tolerances.	2,895.95	*-0-
VF418	**Second Casting/Shoot Overages** Additional lead casting, shoot overages due to additional requests and last minute changes causing further pre-production and overtime. Includes travel to LA and lodging for 4 agency people for 11 days.	42,045.00	*38,964.32

VF419	**Ad Still Life Photo Shoot** Photography for the high impact, still life shots. Includes casting and all photo expenses.	7,025.00	7,637.97
VF421	**Promotion Concepts Phase II** 25 marker comps of promotion concepts to be tested in focus groups in Chicago.	9,345.65	5,446.84
VF422	**VF Bar/Club Neon Promotion** Dakota Neon and "Nuon" to be used for bar/club promotions.	TBD	*-0-
VF423	**Packaging Options** Production of 8 prototype packaging options to be used reviewed by groups in Chicago.	1,530.00	1530.00
VF424	**CPT Test Prints** Printing and assembling 125 books of ad OOH comps to go to CPT test.	5,215.42	*-0-
VF425	**Final Comp Revisions** Revisions made to final 15 comps to be used for RJR presentation.	25,078.23	6,001.34
VF426	**VF Team Appreciation Awards** Create a Dakota Certificate of Appreciation to be given to team members for outstanding work	TBD	*-0-
VF427	**VF High Impact Ad Concepts** Rough concepts, examples of unique, creative ways of displaying Dakota OOH, Field Marketing, Print and POS.	17,905.43	*-0-
VF428	**VF Final Pack Art** Development of art for packs that will appear in ads.	TBD	*-0-
VF430	**Talent Test Usage Fee** Talent test usage fee for 10 models at $1800.00 each (includes talent agency mark up)	18,000.00	*-0-

*Not final invoice amount

The **Chairman**. I will submit some questions to you, but I think you raised a point that is right on target as we are trying to deal with the whole problem of substance abuse and drug education and spending millions of dollars on that. On the other hand, we see the billions of dollars that are being spent to glamorize the area of tobacco.

The varied research, the work that has been done shows, as I mentioned earlier in the hearing and will not repeat it, about the power of movement into gateway drugs and what that means down the road in terms of addictiveness in these other areas. The lines are just there. If we are going to be really serious about trying to deal with that as well as the health implications which we testified to today and which is obviously the highest priority, and these matters are related, then we are going to have to be serious about this issue.

I want to thank you very much.

Mr. **Ballin**. Thank you.

[Additional statements and material submitted for the record follow:]

LETTER FROM ASSOCIATION OF NATIONAL ADVERTISERS, INC.

1725 K Street, N.W., Washington, DC,
February 20, 1990.

The Honorable EDWARD M. KENNEDY, *Chairman,*
Senate Labor and Human Resources Committee
315 Senate Russell Office Building,
Washington, DC.

DEAR SENATOR KENNEDY: Attached is a statement prepared by the Association of National Advertisers, Inc. (A.N.A.) regarding S. 1883, the "Tobacco Product Education and Health Protection Act of 1990." On behalf of the ANA and Association President DeWitt F. Helm, Jr., I respectfully request that this statement be made a part of the hearing record.

As you know, The A.N.A. had requested permission to testify at hearings before the Labor and Human Resources Committee regarding S. 1883. This request was not granted in advance of today's hearing.

A.N.A. maintains that several issues of serious concern to national advertisers were not covered thoroughly during the hearing proceedings this morning and remain outstanding. While we certainly appreciate your consideration of our prepared statement in regard to S. 1883, we believe that these issues merit debate before the full Labor and Human Resources Committee. A.N.A. therefore asks that our earlier request to testify before your committee in regard to s. 1883 be considered when any future hearings on this subject are scheduled.

On behalf of the Association, I thank you in advance for your attention to this request and for your thoughtful consideration of the ANA's views. If you have any questions or require additional information, please do not hesitate to contact me directly.

Best wishes.

Sincerely,

DANIEL L. JAFFE.

PREPARED STATEMENT OF THE ASSOCIATION OF NATIONAL ADVERTISERS, INC.

Section 955 of S. 1883, the "Tobacco Product Education and Health Protection Act of 1990," is almost certain to lead to a de facto ban of all national and regional tobacco advertising in the United States. This provision literally allows thousands of State, county, city and other local governmental entities to impose tobacco advertising restrictions. Section 955's removal of Federal preemption of State regulation of tobacco advertising is a clear prescription for regulatory chaos. The Association of National Advertisers, Inc. (ANA) strongly opposes this provision. ANA's membership includes companies whose more than 2,000 subsidiaries, divisions and operating units market a variety of goods and services and collectively account for almost 80 percent of all regional and national advertising in the United States.

ANA not only believes that enactment of Section 955 will destroy tobacco advertising in the United States, but that it also will create dangerous precedents in regard to Federal preemption and will injure a broad range of advertisers that market products and services other than tobacco products.

What Does Section 955 Do?

The drafters of S. 1883 have stated that the legislative intent of Section 955 of the bill is to remove the Federal preemption of State and local advertising (See Attachment 1). However, the language contained in Section 955 reaches far beyond this purpose.

As introduced, the Section reads:

> "Nothing in this subtitle, Section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332, et seq.) or the Comprehensive Smokeless Tobacco Health Education Act (15 U.S.C. 4401, et seq.) shall prevent *any State or local government* from enacting *additional restrictions* on the advertising, promotion, sale or distribution of tobacco products to persons under the age of 18, or on the placement or location of advertising for tobacco products that is displayed solely within the geographic area governed by the applicable State or local government, such as advertising on billboards or on transit vehicles, as long as the restrictions are consistent with and no less restrictive than the requirements of this subtitle and Federal law." (*emphasis added*)

The first substantive clause of Section 955 would grant broad new authority to "State" *and* "local government" to enact "additional restrictions" on the "advertising, promotion, sale or distribution of tobacco products to persons under the age of 18." This provision allows multiple advertising restrictions by multiple government entities.

Any "State" (which S. 1883 defines as "any State or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico") is allowed to impose "additional restrictions" on tobacco advertising. If each "State," as defined in S. 1883, imposed a single additional restriction on tobacco advertising, that would multiply by more than 50 the number of advertising restrictions facing the tobacco industry. However, Section 955 allows any "State" to apply "additional restrictions" (emphasis added) without *any* limitation as to their number. Therefore, each State, individually, is allowed to impose multiple advertising restrictions.

Furthermore, Section 955 allows "local government" to impose "additional restrictions" on tobacco advertising. There are more than 2,000 cities and counties in the United States. As S. 1883 does not define "local government," apparently local governmental transit authorities, bridge authorities, zoning boards and other such governmental entities, also will be allowed to impose additional restrictions on tobacco advertising. Does anyone seriously believe that tobacco advertising will survive under these circumstances?

"to persons under the age of 18"

On the surface, Section 955 appears to place a limitation on State and local governments by stating that they can only regulate the "advertising, promotion, sale, or distribution of tobacco products to persons under the age of 18." Unfortunately, this clause is totally nebulous, ambiguous and will clearly breed extensive litigation.

If regulation of "advertising to persons under the age of 18" simply means advertising *seen* by youths under the age of 18, as well as the rest of the public, the United States Supreme Court has stated clearly that such a regulatory approach is unconstitutional.

The Court in *Bolger v. Young's Drug Products Corporation*, 463 U.S. 60 (1980), unequivocally stated that efforts to manipulate advertising seen by adults and the young could not be restricted in such a way as to lower discourse in society "to the level of the sandbox." *Ibid* at 73. The Court in *Bolger*, citing *Butler v. Michigan*, 353 U.S.C. 383 (1957), also concluded that "Government may not 'reduce the adult population to reading only what is fit for children.'" *Ibid.*

State and Local Restrictions of Tobacco Advertising Must Be "Consistent" with and "No Less Restrictive" than Federal Regulations

Two other apparent restrictions on State and local regulation of tobacco advertising contained in Section 955 also are certain to generate extensive litigation. Section 955 of S. 1883 provides that in restricting tobacco advertising, States are only allowed to impose additional advertising restrictions if they (1) "*are consistent with*" and (2) "*no less restrictive than* the requirements of this subtitle and Federal law."

There are no provisions in section 955, however, to provide a mechanism to determine whether a particular proposed restriction is "consistent with" or more, less, or equally restrictive than Federal law. Is this determination to be left to the courts to be decided on a case-by-case basis? Is the Federal Trade Commission, which has responsibility for the enforcement of the warnings in tobacco labeling and advertising, to make this determination? Is the Department of Health and Human Services, which has been provided increased powers under S. 1883, to make this determination? Most importantly, does this type of approach have any likelihood of leading to consistent and effective regulatory policy in regard to tobacco advertising? Clearly, the answer to this last question is "no."

Section 955 Would Undermine the Existing National Uniform Structure for the Relation of Tobacco Product Advertising and Create Deleterious Precedents for the Regulation of National Advertising

The Congress has worked deliberately over the past 25 years to develop a tough, comprehensive, uniform scheme for the regulation of tobacco product advertising. It now threatens to destroy this scheme.

In 1965, the Congress enacted the Federal Cigarette Labeling and Advertising Act (FCLA Act), the first in a series of legislation designed to regulate cigarette advertising and labeling. In its current form, the FCLA Act specifically preempts States from enacting cigarette advertising statutes based on smoking and health. In endorsing the Federal preemption language, the architects of the FCLA Act recognized that smoking and health are matters of national concern and therefore should be subject to uniform national regulatory policy.

The declaration of policy and purpose contained in the statutory language of the Federal cigarette advertising and labeling laws confirmed Congress' desire to create a "*comprehensive Federal program* to deal with cigarette advertising and labeling with respect to any relationship between smoking and health . . ." (*emphasis added*) (See 15 U.S.C. Section 1331) Furthermore, the language indicates specifically that in developing an effective Federal program, Congress deemed it essential to preclude "diverse, nonuniform and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." *Ibid.*

Congress since 1965 has sought to refine the Federal cigarette advertising and labeling laws by, for example, changing and adding health warning messages and requiring health warning statements to rotate on a regular basis. The Congress also has developed detailed format, print size, and placement requirements for the four rotating health warnings presently mandated for all cigarette advertising and labeling. Also, based on the FCLA Act model, Congress has moved to require health messages for tobacco products other than cigarettes, such as smokeless tobacco products. At each step the Congress has imposed Federal preemption.

ANA firmly believes that the Congress should not destroy this foundation for the national regulation of tobacco advertising and labeling through the removal of Federal preemption of State and local regulatory authority in this area. S. 1883 proposes a system that requires the coordination of tobacco advertising regulation among thousands of independent governmental entities. If communication rather than obliteration of advertising messages concerning tobacco is the goal, then the regulatory scheme contained in Section 955 must be rejected.

Before the Congress strips away 25 years of Federal preemption, the question needs to be asked "What has changed to justify this sudden shift in policy?" The honest answer is: "nothing has changed." National problems deserve national solutions. There is nothing intrinsically local about the issues raised by tobacco advertising. Nor do the States have any special expertise concerning the health or advertising issues involved. Why should the findings of some county health official be afforded equal or greater status than the findings of the U.S. Surgeon General in regard to the health implications of tobacco?

"Targeting"

In some quarters it has been argued that increased regulation of tobacco advertising should be instituted to counteract the targeting of blacks, women, and blue collar workers. Clearly, whatever one's views on this question, this is a national issue and does not justify removing Federal preemption concerning tobacco advertising. If targeting is inappropriate, it is inappropriate in Dubuque, Detroit, Dallas or any other part of our country. Clearly, targeting is not an issue that should be treated differently from area to area or place to place.

More importantly, ANA firmly believes that efforts to "protect" blacks, women, and blue collar workers from tobacco advertising have dangerous overtones of racism, sexism and misdirected paternalism. As Benjamin Hooks, the Executive Director of the National Association for the Advancement of Colored People, has stated:

> "Buried in this line of thinking and never really mentioned by these critics is the rationale that blacks are not capable of making their own free choice and need some guardian angel to protect their best interests. This is an insidious form of paternalism. Blacks, like the rest of the populace, can make the choice of whether to smoke or not." ("What About Individual Choice?" *Michigan Chronicle*, December 16, 1989 (See Attachment 2))

ANA strongly endorses this view and contends ,that if products are legal to be purchased and used by every segment of the adult population then society should not create second class citizenship with regard to commercial speech. We believe that this issue is really about respect for the rights of all Americans to be treated equally when it comes to receiving information and making decisions for themselves—irrespective of their race, gender or economic status.

Blacks, blue collar workers and women do not need a national nanny to tell them how to think or how to act. To suggest otherwise is merely to create a smokescreen to hide a regime of governmental censorship.

The Need for National Regulation of National Advertising

ANA believes that in order to ensure that actions taken under the banner of "consumer protection" do promote the best interests of consumers, a predictable national regulatory scheme for national advertising must be maintained.

National advertisers must be subject to national standards enforced at the national level. The responsibility for regulating national advertising and protecting the national marketplace should reside primarily with the Federal Trade Commission where a coordinated and uniform national policy can best be achieved. Inconsistent regulation at the Federal, State and local level will make national marketing impossible. Therefore, ANA strongly urges the Senate Labor and Human Resources Committee and the Congress to reject Section 955 of S. 1883.

PREPARED STATEMENT OF THE SMOKELESS TOBACCO COUNCIL, INC., MICHAEL J. KERRIGAN, PRESIDENT

Mr. Chairman, my name is Michael J. Kerrigan and I am the President of the Smokeless Tobacco Council, Inc., an association of domestic smokeless tobacco manufacturers. I appreciate the opportunity to submit this statement, which expresses the views of the smokeless tobacco manufacturers on S. 1883, the Tobacco Product Education and Health Protection Act of 1990.

For those of you who may not be familiar with smokeless tobacco, it is tobacco which is intended to be used in the mouth and is available in two main varieties—chewing tobacco and snuff. Smokeless tobacco has been enjoyed in this country since it was first settled over 300 years ago. Indeed, one brand of smokeless tobacco, still a popular brand today, is one of the oldest consumer products in this country, having been granted one of the first trademarks issued by the U.S. Patent Office. Today, smokeless tobacco products are used primarily by outdoors men and those who work with their hands.

I. The Legislative Proposal: S. 1883

Mr. Chairman, it is the position of the smokeless tobacco manufacturers that the broad, new bureaucratic scheme contained in S. 1883—including the creation of a new Federal agency to be known as the Center for Tobacco Products—is unnecessary, unfair, and based on false assumptions. Furthermore, your proposal would undermine the long standing principle established by Congress of regulating tobacco labeling and advertising so as to provide a uniform and consistent message to the general public regarding the tobacco and health controversy.

Your proposal is unnecessary because current Federal regulation, particularly the Comprehensive Smokeless Tobacco Health Education Act of 1986, P.L. 99-252, (the "Comprehensive Act"), deals in an appropriate manner with most of the smokeless tobacco matters covered by S. 1883. These include public education activities, reports to Congress, and the reporting and evaluation of smokeless tobacco ingredients and nicotine provided for in your bill.

Indeed, the Secretary of Health and Human Services has declared that S. 1883 is "unnecessary." In his statement submitted to the U.S. Senate Committee on Labor and Human Resources on February 20, 1990, Dr. Sullivan stated:

> Although we support the committee's efforts to focus greater attention on tobacco and health, I believe the Department's activities—those underway and those we will be pursuing during the coming months—serve the same purpose and

> accomplish the identical goals as those set forth in S. 1883. The Administration shares the concerns addressed by the legislation.
>
> We do not believe, however, that the additional authorizations and requirements contained in S. 1883 would measurably add to our current or planned efforts. Therefore, the Administration believes such legislation is unnecessary.

The Comprehensive Act represents a sweeping effort by the Federal Government to nationally and uniformally regulate the smokeless tobacco industry. This comprehensive and uniform Federal law should be given adequate time to work before the American taxpayer is burdened with a new, largely redundant, regulatory scheme.

Second, S. 1883 is unfair because it would strike down, without justification, the right of smokeless tobacco manufacturers to have their product formulas treated by the Federal Government as confidential trade secret information—a right recognized by Congress when it passed the Comprehensive Act and one accorded manufacturers of all consumer products.

Furthermore, the array of anti-tobacco programs proposed under Subtitle B of the bill, including so-called "persuasional programs," embody proposals that do not have a proper place in a democratic society. These campaigns would be aimed specifically at "school dropouts, minorities, blue collar workers, and low and no income individuals" and are intended to deny these adult American citizens their informed freedom of choice as to whether to use tobacco products.

S. 1883 also seeks to undermine the long-standing Federal policy of maintaining a uniform national system for regulating tobacco advertising. The bill seeks to foster a patchwork of local—and therefore inconsistent—regulations. This ill-advised aspect of the bill would threaten the carefully constructed balance struck by the Congress between regulation of tobacco products and legitimate commerce.

Finally, the proposed legislation is based on false assumptions, including the notion that tobacco advertising and promotion contributes to the initiation of tobacco use by youth.

Needless to say, Mr. Chairman, the enormous cost of erecting this new bureaucracy—$185 million in fiscal year 1991 alone—would impose an unacceptable new burden on the American taxpayer, and divert resources from the country's real needs, in this era of budget deficits and fiscal restraint.

II. Our Record on Smokeless Tobacco and Youth

Before turning to a detailed discussion of our industry's position on S. 1883, I shall focus on one concern of the bill to which the smokeless tobacco manufacturers have devoted substantial efforts and resources—ensuring that smokeless tobacco products are not marketed to persons under the age of eighteen. The smokeless tobacco manufacturers have adopted the Code of the Smokeless Tobacco Industry. Under the Code, smokeless tobacco manufacturers oppose any association of smokeless tobacco with activities which may be designed for persons under the age of eighteen. In particular, we do not direct our advertising or promotions toward youth, do not use active athletes or professional entertainers to endorse our products, and all models who appear in our advertisements must be at least 25 years of age. A copy of our Industry Code is attached.

In addition to these strict policies, our industry has spent considerable time and effort encouraging others to support our "adults only" policy. In 1984, only 22 States had laws mandating 18 as the minimum age for purchase of smokeless tobacco. Thanks in part to our efforts, 38 States now have laws establishing 18 or a higher age as the minimum age for purchasing our products. Not only do we support 18 as the minimum age of purchase, in many of these States—Colorado, Maryland, New York, Pennsylvania, Texas and Virginia, for example—the Council submitted testimony and actively supported the passage of these laws.

In 1984, we began a program to encourage retailers to support our policy that 18 years should be the minimum age for purchase of our products. The Council printed and distributed point-of-sale signs to more than 50,000 convenience stores urging retailers to ask for positive identification when selling our products and not to sell them to anyone under 18, even if the laws in their States did not prohibit it.

In 1985, to reach the general public with our message, we produced a public service announcement ("PSA") entitled "Smokeless Tobacco is NOT for Kids" and released it to 300 television stations nationwide. Millions of people heard and saw this important message.

We continued vigorously to carry out this program in 1986 by means of the print media. "Some things are still for adults only" was the paid public service announcement that kicked off our 1986 program. This PSA urged those under 18 not to attempt to buy smokeless tobacco products and urged retailers not to sell our products to anyone younger than 18.

We also launched a national media campaign entitled "Because We Care." We placed open letters to America's parents, coaches, teachers and retailers urging these adult authority figures to help educate the Nation's youth about our age of purchase policy. These messages were placed in some of the most widely circulated publications in the country including *Parade Magazine* and *The Washington Post*, as well as some key specialty publications such as *Education Week* and *Convenience Store News*. In 1986 alone, we reached more than 25 million people.

From 1987 to 1988, the Council went to the local level with two new paid public service announcement campaigns concerning youth and smokeless tobacco. The first campaign—"It's Our Responsibility"—was targeted at local newspapers and featured strong parental figures discussing responsibility and the importance of parents helping to prepare their children for adult decisions. These PSAs were placed in local newspapers from coast to coast such as *The* (Memphis) *Commercial Appeal*, the *Wisconsin State Journal*, the *Southern Illinoisan* and the *Tallahassee Democrat*. With this PSA alone, we reached more than three million readers.

Another Smokeless Tobacco Council campaign—directed specifically at education-related print media—urged America's teachers, coaches and principals to teach youth about the "Fourth R: Responsible Decision-Making." Among the 47 publications that ran our PSAs were the nationally-circulated *Education Week* and *Teacher*, as well as *West Virginia School Journal* and *The Arizona Administrator*.

In 1989, we produced a compendium of all of the industry's youth efforts to date entitled "A Continuing Commitment." This publication was distributed to business, civic and youth organizations communicating our message and asking their help in supporting our policies. The Boy Scouts of America, the Rotary Club International and the U.S. Chamber of Commerce are some of the nearly 100 organizations we contacted.

As a result of that effort, we worked closely with the American Legion to incorporate our youth message into their youth outreach programs. We twice addressed their Committee on Americanism and Youth, distributed our youth policy materials to 50 State commanders and more than 100 other top officials, and placed paid public service announcements in *The American Legion Magazine*. Thanks to the Legion's cooperation, our message will reach a far wider audience.

In addition to these yearly campaigns, we maintain many ongoing activities to get our youth message out to the public. We have spoken to tobacco farmers, distributors of tobacco products and convenience store owners to explain our youth policy and ask their help in making it work. We have also distributed tens of thousands of pieces of literature on our policy during the course of delivering these addresses. Some examples of those materials are being submitted with this statement.[1]

We also take advantage of editorial opportunities to get our message across. We regularly publish op-ed articles in trade and general interest publications to inform readers of our policies. We also make a point of setting the record straight when publications wrongly accuse our industry of marketing smokeless tobacco to those under 18. Hundreds of letters to the editor have been sent out reminding editors and their readers of our policy that smokeless tobacco is not for youth.

Our industry is proud of the efforts we are making, and we will continue these programs into the nineties to ensure that the American public understands and remains aware that our products are for adults only.

III. S. 1883 is Unnecessary and Unfair

Upon introduction of S. 1883, it was stated that "tobacco [is] the only consumer product today that has serious consequences for public health but that is essentially uncontrolled." The notion that tobacco products are "uncontrolled" or unregulated is wrong. In fact, smokeless tobacco products are regulated by an array of Federal authorities, including:

—The Department of Health and Human Services, which monitors the ingredients in smokeless tobacco products, conducts tobacco and health research and public information programs, and reports to Congress on an annual basis regarding tobacco and health issues;

—The Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, which collects tobacco taxes, and restricts certain marketing and promotional practices;

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[1] The materials being submitted with this statement are as follows: (a) The Code of the Smokeless Tobacco Industry, (b) " a continuing commitment", (c) "Because we care ———, (d) "Taking Our Responsibility Seriously ———, (e) "Common Values, Common Programs"—Remarks by Michael J. Kerrigan to the American Legion Commission on Children and Youth, May 8, 1989, and (f) Examples of paid public service announcements.

—The Department of Agriculture, which grades and characterizes tobacco, and regulates production and prices;

—The Federal Trade Commission, which regulates tobacco product packaging and advertising, including monitoring the use of government-prescribed warning messages on smokeless tobacco products, and reports to Congress on a biennial basis regarding the sales, advertising, and marketing practices of the smokeless tobacco industry.

These wide-ranging Federal efforts are supplemented by a panoply of State and local regulatory authorities, including:

—State and municipal environmental protection agencies;

—State occupational safety and health agencies;

—State consumer protection agencies;

—State departments of labor; and

—Municipal fire marshals.

Given this comprehensive Federal, State, and local framework, S. 1883 is unnecessary. Indeed, it is clear that all of the stated "purposes" set forth in Section 2(b) of S. 1883 as they relate to smokeless tobacco products are currently fulfilled by the Comprehensive Act as demonstrated by the following summary:

—S. 1883 states that it is a purpose of the bill to "help educate young citizens to prevent initiation and encourage cessation of tobacco use" and to "support State efforts to improve educational programs for the prevention and cessation of tobacco use," but such activities are already within the scope of Section 2 of the Comprehensive Act entitled "Public Education."

—S. 1883 states that it is a purpose of the bill to "inform the public about the harmful effects of tobacco products," but Sections 2, 3, 4, and 8 of the Comprehensive Act mandate health warnings for smokeless tobacco products and advertisements and provide the Secretary of HHS with a broad array of authority to undertake "informational" and "educational" programs.

—S. 1883 states that it is a purpose of the bill to "strengthen laws limiting the sale of tobacco products to minors" but Section 2(b)(3) of the Comprehensive Act provides the Secretary of HHS with authority to carry out such activities.

—S. 1883 states that it is a purpose of the bill to "establish Federal regulatory authority over tobacco products and additives in such products," to "ensure the disclosure of accurate information to the public," and to "analyze additives and determine the risk of such additives to individual health," but all of these matters are covered by the Comprehensive Act, particularly Section 4 of the Act.

Some specific examples of the redundant and unfair nature of the provisions of S. 1883 include:

A. Reporting Provisions

The smokeless tobacco reporting program of S. 1883 is unnecessary. Section 4 of the Comprehensive Act, entitled "Ingredient Reporting", already provides in part:

(1) Each person who manufactures, packages or imports smokeless tobacco products shall annually provide the secretary with——

(A) a list of the ingredients added to tobacco in the manufacture of smokeless tobacco products which does not identify the company which uses the ingredients or the brand of smokeless tobacco which contains the ingredients; and

(B) a specification of the quantity of nicotine contained in each such product.

The smokeless tobacco manufacturers strongly believe these Comprehensive Act reporting provisions adequately and appropriately serve the legitimate public interest, as determined by Congress, by providing the Department of Health and Human Services with information about the ingredients and nicotine content of smokeless tobacco products. Furthermore, the industry has cooperated fully with the Department of Health and Human Services in developing and responding to the regulatory and statutory requirements of the Act.

B. Evaluation of Ingredients

S. 1883 contemplates that the proposed Center will evaluate smokeless tobacco ingredients to determine whether they represent what the bill refers to as "unnecessary increased risks to health." However, the ingredient provisions of the Comprehensive Act require that the Secretary of Health and Human Services report to Congress regarding scientific research on the possible health effects of smokeless tobacco ingredients and, in particular, that the secretary advise Congress with regard to any smokeless tobacco ingredient which the secretary believes "poses a health risk to users of smokeless tobacco." Clearly, the secretary must undertake a scientific evaluation of smokeless tobacco ingredients in order to comply with this Congressional mandate.[2] Indeed, Congressman Henry Waxman—one of the leading proponents of the Comprehensive Act—described the ingredient reporting and evaluation provisions of the Act as follows:

> "Section 4 of the legislation requires ingredients in smokeless tobacco to be disclosed to the Secretary of Health and Human Services. Such disclosure will permit more precise evaluation of the health effects of smokeless tobacco products and will enable the secretary to warn of specific ingredients contained in smokeless tobacco that may increase the health risks of the product." Cong. Rec. Feb. 3, 1986 H 249.

Mr. Chairman, it is clear. The proposed S. 1883 ingredient evaluation requirements are unnecessary and duplicative of existing Federal law. The recently enacted provisions of the Comprehensive Act should be permitted to continue in effect for a reasonable time before rushing to impose new and conflicting rules and standards.

C. Public Dissemination of Proprietary Product Formula Information

Section 953(b)(1) of S. 1883 provides that the Secretary of Health and Human Services shall promulgate regulations for she public dissemination, either on smokeless tobacco product packages or by other means, of smokeless tobacco proprietary product formula information. This proposal is in direct conflict with existing Federal laws which recognize that certain consumer product ingredient information is a confidential trade secret.

The ingredient reporting provisions of the Comprehensive Act explicitly recognize the proprietary nature of smokeless tobacco product ingredient information, the only exception being for disclosure of such information to a Congressional committee.[3] The proponents of S. 1883 offer no justification for striking down the important and legitimate trade secret protections to which smokeless tobacco manufacturers, like all manufacturers, are entitled and which were acknowledged by Congress just four years ago. Indeed, S. 1883 would subject smokeless tobacco manufacturers to disclosure requirements that go far beyond those applied to other consumer products. Smokeless tobacco manufacturers would be required to divulge on a brand basis ingredients such as individual flavorings ingredients explicitly exempted from all other Federal disclosure requirements, specifically because of their importance as trade secrets.

D. Reports to Congress and "Public Education" Activities

Sections 928 and 929 of S. 1883 contain proposals for "public education regarding smokeless tobacco" and reports to Congress by the Secretary of HHS regarding various matters relating to smokeless tobacco.

The "public education" provisions of Section 928 (beginning on page 38) direct the secretary to "establish and carry out a program to inform the public of any dangers to human health resulting from the use of smokeless tobacco products" and set forth various duties which the secretary shall undertake in carrying out the program. Section 928 also provides that the secretary may furnish technical assistance and make grants to the States "to assist in the development of educational programs and materials and public service announcements" relating to smokeless tobacco, and "to establish 18 as the minimum age for the purchase of smokeless tobacco." Section 929 provides that the secretary shall submit to Congress biennial reports containing, among other things, "a description of the effects of health education efforts on the use of smokeless tobacco products" and "an evaluation of the health effects of smokeless tobacco products and the identification of areas appropriate for further research."

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[2] These requirements are set forth in Section 4(b) of the Comprehensive Act:

(b) Report. (1) At such time as the secretary considers appropriate, the secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of smokeless tobacco products and the findings of such research;

(B) information pertaining to any such ingredient which in the judgment of the secretary poses a health risk to users of smokeless tobacco; and

(C) any other information which the secretary determines to be in the public interest.

[3] The ingredient confidentiality provisions of the Comprehensive Act state:

(2)(A) Any information provided to the secretary under subsection (a) of this section shall be treated as a trade secret or confidential information subject to Section 552(b)(4) of Title 5, and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the secretary in carrying out their official duties under this section.

* * *

(C) The secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by any person authorized to have access to such information, shall store it in a locked cabinet or file; and

(ii) shall maintain a complete record of any person who inspects or uses the information. Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

While at first glance these provisions of S. 1883 regarding "public education" and reports to Congress regarding smokeless tobacco issues may seem laudable, they are totally unnecessary. Every provision contained in Sections 928 and 929 of S. 1883 is already part of the Comprehensive Act. Indeed, the provisions of Sections 928 and 929 are taken virtually verbatim from Sections 2 and 8 of the Comprehensive Act. Duplicating provisions of existing law underscores the truly redundant nature of S. 1883 and unnecessarily increases the cost to the taxpayer.

IV. False Assumptions: Tobacco Products and Minors

The provisions of S. 1883 regarding use of tobacco products by minors, while well-intentioned, are based on false assumptions. The bill contains a purported "finding" that "the tobacco industry contributes significantly to the experimentation with tobacco and the initiation of regular tobacco use by children and young adults through its advertising and promotion practices." The fact of the matter is, however, that research studies by tobacco critics have consistently found that tobacco advertising and promotion have no significant impact on the initiation of tobacco use. The following studies are of particular interest with regard to the issue of smokeless tobacco use by youth:

—In a paper published in the American Journal of Public Health in 1986, Marty and his colleagues reported on their study of 901 high school students in northwest Arkansas. Those students who reported using smokeless tobacco were asked about the primary influence in their initiation of smokeless tobacco use. 82.7 percent of the respondents reported that the primary influence was one of the following: a friend, a relative other than a parent, a teacher, a coach, or a parent. Only one respondent, comprising 0.6 percent of the group, reported that an advertisement was the primary influence. Marty, P.J., et al., Patterns of Smokeless Tobacco Use in a Population of High School Students. AJPH 76 (2): 190–192, 1986.

—In a second study based in Arkansas, Williams and his colleagues reported on their work with over 1200 students at 13 rural Arkansas high schools. Those students who reported using smokeless tobacco were asked "who/what was the single most significant influence in your decision to begin using smokeless tobacco?" The researchers noted that "a strong parental influence was evident in the reason most frequently cited for deciding to use smokeless tobacco." Indeed, 57.1 percent of the respondents answered "a parent"; 32.7 percent answered "a coach"; and 9.2 percent responded "a teacher." Again, only a single respondent, comprising 0.5 percent of the group, indicated that "an advertisement" was the most significant influence. The researchers concluded that "the youth surveyed in this study did not report advertising to be instrumental in the initiation of product use." Williams, T., et al., Smokeless Tobacco Use Among Rural High School Students in Arkansas. J Sch Health 56(7): 282–285, 1986.

—Guggenheimer and his colleagues published a study in the American Journal of Public Health in 1986 in which they reported on a group of 609 students in the Pittsburgh area. Those students who reported using smokeless tobacco were questioned as to what influenced them to use the products. The researchers reported that "although mass media and other marketing efforts to promote smokeless tobacco have intensified, only 4 percent of the users admitted to being so influenced, whereas 60 percent reported learning about the products from a friend." Guggenheimer, J., et al., Changing Trends of Tobacco Use in a Teenage Population in Western Pennsylvania. AJPH 76 (2): 196–197, 1986.

Furthermore, the provisions of S. 1883 regarding use of tobacco products by minors are redundant given our industry's own efforts both to ensure that smokeless tobacco products are not marketed to persons under the age of eighteen, and to support State laws which prohibit the sale of tobacco products to persons under the age of 18. As to the few States that permit the sale of tobacco products to persons under the age of eighteen, there are adequate measures already in place to encourage these States to adopt appropriate legislation. For example, the Comprehensive Act provides that "the Secretary of Health and Human Services may provide technical assistance and may make grants to States to establish 18 as the minimum age for the purchase of smokeless tobacco."

Our industry's determination and common cause with the Department of Health and Human Services in this area is underscored by the fact that the Smokeless Tobacco Council has drafted and made available to State legislatures a model statute which establishes 18 as the minimum age for purchase of smokeless tobacco products. The model statute provides, in part:

> —Sec. 1. Sale of Smokeless Tobacco Products—It shall be unlawful for any person, firm, corporation, partnership, or any other entity engaged in the sale of smokeless tobacco products to knowingly sell, barter, give, or in any other way furnish to a person under the age of eighteen (18) years any smokeless tobacco products, including chewing tobacco, snuff, or any other form of smokeless tobacco.
>
> Sec. 2. Purchase of Smokeless Tobacco Products—It shall be unlawful for any person under the age of eighteen (18) years tó purchase, barter, or in any other way receive from any person, firm , corporation, partnership, or any other entity engaged in the sale of smokeless tobacco products any smokeless tobacco product, including chewing tobacco, snuff, or any other form of smokeless tobacco.

V. Impact of S. 1883 on Tobacco Farmers and Manufacturers

Smokeless tobacco manufacturers have developed a close relationship with domestic tobacco farmers, and a deep appreciation for the unique agricultural practices which generations of our farmers have utilized.

Under S. 1883, tobacco products would be subject to an extensive regulatory regime which would encompass tobacco growing and tobacco constituents, the very elements of the plant itself, as well as the tobacco product manufacturing process. As a result, the bill holds substantial implications for tobacco farmers:

Tobacco constituents are broadly defined, thereby granting the new Center authority to regulate the naturally occurring elements of the plant itself. Constituents may also include the content of the leaf after curing.

Additives are also defined broadly under the bill, granting the Center authority to regulate tobacco ingredients used in tobacco growing and processing.

Current tobacco growing and curing practices could be radically altered due to new restrictions on tobacco constituents or additives. Constituents and additives used in growing tobacco could be subjected to regulation by the Center in addition to current requirements of EPA or USDA. This could be an expensive and time-consuming process at best.

In sum, S. 1883 would impose a new regulatory program on smokeless tobacco manufacturers. In turn this new system could impose significant new costs and technically unachievable restrictions on American tobacco farmers and processors.

VI. S. 1883 Lacks a Balanced Approach to Education

Subtitle B of S. 1883 provides a vehicle for private anti-tobacco advocates to obtain Federal funds for "public information campaigns" and "persuasional programs." These programs would be directed at, in the ironic words of the proposal, "target" groups whom anti-tobacco advocates apparently believe are unable to make their own adult decisions, or who perhaps are thought to be making the "wrong" decisions. Among the "targeted" groups would be "minorities," "blue collar workers," "school dropouts," and "low and no income individuals." Federal funds would also be used to develop programs aimed at "workers and their families" involving "a concentration of effort to change tobacco use behavior in those groups."

Providing information intended to permit adults to make an informed decision whether to use tobacco products is one thing. Engaging in Federally funded "persuasional programs" aimed at effecting "behavior change" in "minorities [and] blue collar workers" is quite another and accordingly must be rejected.

We believe American adults should be allowed to exercise their informed freedom of choice to use these legal tobacco products. The claimed health risks of smokeless tobacco use are universally known, and congressionally-mandated information on this subject appears in smokeless tobacco advertisements and on every smokeless tobacco package. Consumers should be allowed to evaluate this information and decide, without coercion or restrictions, whether to use tobacco products. While we will continue our efforts to ensure that smokeless tobacco products are not marketed to persons under the age of eighteen, we also will vigorously oppose any effort to infringe upon the rights of adult citizens who choose to use our products.

VII. S. 1883 Would Undermine the Principle of Nationally Uniform Regulation of Tobacco

Section 955 of S. 1883 is an ill-advised attack on a fundamental principle underlying Federal regulation of tobacco products. It has long been recognized that the regulation of tobacco products, which are marketed and used nationwide, must be carried out on a nationally uniform basis. Thus, the Comprehensive Act put into place a nationally uniform program for the regulation of smokeless tobacco.

Mr. Chairman, Section 955 would undermine this well established principle by permitting, and even encouraging, State and local authorities to enact diverse and inconsistent regulations regarding smokeless tobacco advertising, sale and promotion. Moreover, since anti-tobacco activists have declared their intention to seek outright bans of local tobacco advertising, Section 955 would be in direct conflict with First Amendment protection of commercial speech. Indeed, S. 1883 would provide Federal funding for these unconstitutional State and local restrictions on commercial speech, as well as funding private counter-advertising. In short, S. 1883 seeks to employ the power of the Federal Government to attack the First Amendment rights of smokeless tobacco manufacturers, as well as to sweep aside traditional and fundamental notions of balance in the regulation of commerce in tobacco.

* * *

In conclusion, Mr. Chairman, the passage of S. 1883 would undermine Congress' own recent efforts to establish a comprehensive Federal framework of smokeless tobacco regulation. The Comprehensive Act established a broad system of regulation for smokeless tobacco products, including educational programs, package warnings, and ingredient and nicotine reporting. S. 1883 would wipe out this comprehensive plan and instead impose a redundant and unwarranted new system. It is imperative we take the time to evaluate the effectiveness of the Comprehensive Act before any additional burdens are placed on the taxpayer under the guise of tobacco "regulation."

Indeed, S. 1883 represents such a dramatic departure from the comprehensive policies for regulating tobacco products as determined by Congress, and affects such fundamental principles of commerce as the advertising, labeling, and sale of a consumer product, that this proposal requires closer scrutiny and careful consideration by those Senate committees with jurisdiction over those matters.

Finally, S. 1883 raises an issue which is fundamental in our democratic and free enterprise society with its many constitutional and legal protections against excesses. It is disingenuous for the proponents to label this bill as a regulatory proposal, when in fact its purposes and theirs are clear: the cessation of tobacco use and the creation of a "tobacco free society." In reality the bill creates a new Federal bureaucracy by which anti-tobacco proponents would preside over the ultimate demise of the industry with which they would be charged with "regulating."

The smokeless tobacco industry is an honorable one. Over the years we have demonstrated that we are a responsible and reasonable industry. As we have done during consideration of previous legislation regulating our tobacco products, we will work conscientiously to avoid divisive discourse and take a fair-minded approach to this complex issue. Nevertheless, we are resolved to protect our right to manufacture and market quality smokeless tobacco products to our adult consumers in a responsible manner.

Thank you, Mr. Chairman, for the opportunity to present these views to the committee.

PREPARED STATEMENT OF THE NATIONAL AUTOMATIC MERCHANDISING ASSOCIATION, RICHARD W. FUNK, CHIEF COUNSEL

Chairman Kennedy and distinguished members of the Committee on Labor and Human Resources, my name is Richard W. Funk and I am Chief Counsel of the National Automatic Merchandising Association. The National Automatic Merchandising Association is the national trade association of the merchandise vending business. 1400 companies which belong to our association operate merchandise vending machines and of these, more than 1000 sell cigarettes through vending machines. They strongly oppose Section 5 of S. 1883 (Sec. 919(b)(C)). We singularly object to that provision in the "Tobacco Product Education and Health Protection Act of 1990" which would limit the sale of cigarettes through vending machines to places where persons under the age of 18 are not permitted, in order to qualify for State grants.

The vending industry has long recognized its responsibility to prevent minors' purchasing cigarettes through vending machines. As early as 1962 we adopted a 6-step self-regulation program designed to make sure cigarette vending machines are not a source of cigarettes for minors. These six steps, first adopted 27 years ago, are as follows:

Each vending machine operator should:

1. Survey his entire cigarette operation to determine the location of those machines to which minors are likely to have access.
2. Post "Minors are Forbidden" warning decals conspicuously on all machines.
3. Post on each machine the name, address, and phone number of the operator.
4. Solicit the location owner's cooperation to prevent minors from purchasing from machines to which minors have access. Reposition machines, where necessary, to assure adequate supervision.
5. Remove machines from locations where the sales of cigarettes to minors cannot be prevented.
6. Cooperate with competitors to achieve area-wide compliance of preventing the purchase of cigarettes by minors from vending machines. (As part of this step, establish local group liaison with police officials and offer cooperation in the enforcement of "sales to minors" laws).

This 6-step self-regulation program has been vigorously followed by all members of our industry since it was first adopted in 1962.

A variety of statistics clearly show that cigarette vending machines are the least likely source of cigarettes for purchasing by teenagers under the age of 18 who smoke. About 8 out of 10 cigarette vending machines are located where teenagers are not allowed or rarely frequent: Bars, Cocktail Lounges 31%, Industrial Plants 27%, Offices 12%, Hotels/Motels 4%, Universities/Colleges 3.5%—TOTAL 77.5%. Other Locations—Restaurants 13%, Service Stations, Government—Military, Retail Stores, Transportation Terminals, Rec.—Bowling Centers, Misc.—TOTAL 22.5%.

These statistics are based on a nationwide vending machine placement study representing 590 of the 1,000 or so NAMA member companies who operate cigarette machines. The survey covered virtually every State and was conducted in March, 1986. These figures are confirmed by similar subsequent studies. For instance, a 1988 survey in the State of Michigan totaling 4,048 machines, showed that 95.6 percent of these machines are located in places where minors are not allowed or are well supervised. This survey included more than half of all licensed cigarette machines in Michigan.

Sales of cigarettes through vending machine represent only 3.4 percent of the total cigarette market.

Analyzing these figures and noting that slightly less than 2 out of 10 high school seniors smoke cigarettes regularly, and of these, 13.8 percent smoke half a pack a day or more and 7.3 percent a pack a day or more (This is based on a study: *Drugs and American High School Students: 1975–1983,* U.S. Department of Health and Human Services, Public Health Service), it is clear that cigarette vending machines are a trivial source of cigarettes for persons under the age of 18. Moreover the placement of cigarette vending machines has been drastically reduced in recent years. Note that in 1976, 32,065 new cigarette machines were shipped; in 1988 just 3,494.

A study underwritten by us conducted in June and July, 1989 analyzing teenage smoking and purchasing behavior showed that of the teenage smokers who buy cigarettes often or occasionally, only one out of 11 frequently buys cigarettes from vending machines (9 percent). Of this group that buys cigarettes, over 3 out of 4 say they use vending machines seldom or never. 64 percent of teenagers who buy cigarettes often or occasionally, buy them over the counter from a sales clerk in convenience stores (43 percent), in gas stations (29 percent), in grocery stores (11 percent) and in drugstores (6 percent). A copy of this report conducted by Response Research is made part of this statement.

As is evident from the Response Research study, cigarette vending machines have no discernible influence on teenagers' smoking. Whether parents smoke is the most important influence on teenagers' smoking habits along with peers and other family members.

Not a single State prohibits the sale of cigarettes through vending machines. States are close to the teenage smoking situation and they see no problems in the sale of cigarettes through vending machines. They have long ago concluded that cigarette vending machines are the least likely source of cigarettes for teenagers. We suggest that the Congress should not be usurping the States' exercise of this normal police power. Since most of the 50 States already have on their books laws which the proposed legislation tries to encourage by the payment of Federal grants, it seems the proposal calls for a misspending of tax dollars, particularly uncalled for in this era of massive Federal deficits.

Prohibiting the sale of cigarettes through vending machine will result in a severe economic loss. Without factoring in the hardware capital loss represented by the overnight total devaluation of that percentage of 374,000 cigarette vending machines which will no longer be allowed to be located on premises where those under the age of 18 can frequent, consider the following consequences: up to 10,000 lost route and other vending jobs at an average annual compensation of $25,000 totaling $250,000,000; loss of retail sales of $1,600,000,000, and without putting a dollar figure on it, diminished vehicle purchases and purchases of other supporting equipment.

The vending industry continues to recognize its responsibilities through self regulation (even though the vast majority of our machines is located where teenagers do not have access to them and the current Response Research study shows that few teenagers purchase from vending machines). The vending industry took the lead voluntarily over 27 years ago to prevent teenagers from buying cigarettes. It stands ready to cooperate with all groups to make sure that its record of responsible conduct and compliance with established laws is maintained in fact and in spirit.

Thank you for this opportunity to express our views.

PREPARED STATEMENT OF THE U.S. HISPANIC CHAMBER OF COMMERCE

Chairman Kennedy, Senator Hatch and members of the committee, it is an honor to have the opportunity to provide you with the written testimony of the U.S. Hispanic Chamber of Commerce's position on Senator Kennedy Anti-Tobacco Bill, S 1883.

The U.S. Hispanic Chamber of Commerce has been for the past ten years committed to fostering the development and growth of the U.S. Hispanic business community and to advocating Hispanic business interests. The U.S. Hispanic Chamber of Commerce national Hispanic business network is comprised of more than 200 Hispanic chambers of commerce and Hispanic business associations, and some 400,000 Hispanic owned business. As a leading national Hispanic business organization, the U.S. Hispanic Chamber of Commerce also advocates the advancement of the Hispanic population at large through an active involvement in social/economic issues such as Education, Health, Immigration, Housing etc.

Included in the U.S. Hispanic Chamber of Commerce's membership is the National Association of Hispanic Publications (NAHP). Mr. Tino Duran, President. NAHP seeks to represent more than 250 Spanish-language and bilingual publications in the United States with a combined circulation of 15 million. Their mission is to facilitate the advancement of Hispanic business and Hispanic inhabitants into the U.S. economic and social mainstream through an easy access to information. The Hispanic print media industry is a fast growing industry generating millions of dollars in both employment—Hispanics primarily—and vending opportunities in their local communities. As a result, this industry contributes to reducing the high unemployment rate among Hispanics in America, cutting the welfare cost, and increasing the revenue tax base, hence benefiting the U.S. economy at large.

As you well know, the U.S. Hispanic population surpasses 20 million and grew by 39, versus for the U.S. general population, according the Department of Commerce's Census Bureau. Immigration accounts for about half of the overall growth. By the year 2000, Hispanics will represent 10 of the U.S. workforce. It is clear that Hispanic print media serve a very important segment of the population.

Surveys have proven that for social/cultural reasons the majority of Hispanics read Hispanic publications rather than English. A vast portion of the Hispanic population read Spanish publications because of their limited English proficiency. This segment of the population cannot be denied access to information and education. It will not be necessary to convince Mr. Chairman nor Senator Pell since both of you have introduced last year to the Senate complementary teacher enhancement bills that target the minority teacher shortage. On the other hand, small Hispanic owned business tend to advertise in community Spanish newspapers because the cost is far lower than that of English newspapers. Again, it is clear that Hispanic publications meet the needs of a very important segment of the U.S. population.

Members of the Tobacco industry are long time corporate partners of she Hispanic business community. Their efforts to "give back" to the community, to reach out to Hispanics is exemplified in Philip Morris Companies Inc., RJR Reynolds and others' support to non profit Hispanic associations committed to the advancement of Hispanics in the U.S. economic and social mainstream. Through their minority vending programs, these U.S. major corporations generate billions of dollars in procurement opportunities for Hispanic business and other minority owned business, hence fostering their growth and advancing the minority community at large.

By giving unbridled authority to States and localities to restrict tobacco advertising, S. 1883 would make advertising for the tobacco industry prohibitively expensive or practically impossible. This would entail a severe cut in Hispanic publications' resources which would drive them out of business. The immediate impact on the Hispanic population and Hispanic business population would be extremely severe: lost of thousands of jobs—among Hispanics primarily high cost of opportunity due to the fact that Hispanic entrepreneurs would shy away from the print media industry and would be deprived from owning their own business and create jobs in their communities; the limited English proficient Hispanic population would be deprived from access to information and education; Hispanic business would not be able to promote their business at a reasonable cost in community based Hispanic newspapers; etc. The impact of S. 1883 would considerably hurt the Hispanic business community and Hispanic population, possibly leading to effects radically opposed to the intention of this bill as well as to Senators Kennedy and Pell's teacher enhancement bills.

Furthermore, if enacted, this bill would establish a dangerous precedent for censoring the advertising of other "controversial" products, jeopardizing even further the financial resources of Hispanic publications, and hindering their growth.

Not withstanding the above referenced concerns and certainly of most importance, the U.S. Hispanic Chamber of Commerce takes issue with passage of S. 1883 for its tendency towards violating protection of individual and collective rights under the first Amendment of the U.S. Constitution as it relates to freedom of choice. Under the guise of preventing youth access to tobacco products, this bill conceivably violates the First Amendment of the Constitution to which our organization has been committed since its inception and for which thousands of Spanish speaking individuals have fled their country and immigrated into the United States of America, the land of freedom and opportunity where everyone is entitled to an equal place at the starting line. On February 12, 1990, the U.S. Hispanic Chamber of Commerce Board of Directors ratified a Resolution opposing any effort to ban or restrict truthful, non-deceptive advertising of legal consumer products, based on its long standing commitment to the First Amendment of the U.S. Constitution and the protection of individual and collective rights. Enclosed is a copy of the above referenced Resolution.

Chairman Kennedy, Senator Hatch and members of the committee, the U.S. Hispanic Chamber of Commerce urges you to please consider the social and economic severe impact that S. 1883 would have on the Hispanic business community, the Hispanic population and the U.S. economy at large.

Thank you for this opportunity to present the U.S. Hispanic Chamber of Commerce's view and concerns. Should you have any question, please contact Ms. Veronica Gouabault, Eastern Regional Manager, at (202) 789-2717.

RESOLUTION

Whereas: The U.S. Hispanic Chamber of Commerce (USHCC) is organized to promote the creation and foster the growth of Hispanic-owned retail and wholesale businesses, and

Whereas: The development of minority-owned and operated commercial, industrial and professional activities is vital to the socio-economic growth of the growing Hispanic community and the U.S. economy at large, and

Whereas: An environment conducive to a free enterprise system is essential to the expansion and prosperity of Hispanic-owned ventures including the freedom of speech, freedom of thought, freedom of expression, and freedom of choice, and

Whereas: The USHCC has a long standing commitment to the First Amendment of the U.S. Constitution and the protection of individual and collective rights, and

Whereas: It has come to the attention of the USHCC that attempts are being made at various levels of government to ban advertising of consumer products, and

Whereas: Such legislative and/or regulatory prohibitions would curtail fundamental freedoms,

NOW, THEREFORE, BE IT RESOLVED THAT the USHCC oppose any efforts, in whatever form or forum to ban or restrict truthful, non-deceptive advertising of legal consumer products.

Duly adopted by the USHCC Board of Directors on this 12th day of February, 1990.

Attest: Dina M. Cedero, Secretary
Lupe Garcia, Chairman of the Board

PREPARED STATEMENT OF THE CIGAR ASSOCIATION OF AMERICA, INC.

The Cigar Association of America (CAA) appreciates the opportunity to present its views on S. 1883 (The Tobacco Product Education and Health Protection Act of 1990).[1] These comments are limited to the provisions of the bill as they pertain to the U.S. cigar industry, whose annual sales in 1989 were about $665 million, representing less than 2 percent of all tobacco products sold in the United States.

The CAA opposes the broad scope of S. 1883. The "Findings" upon which the bill is premised present fundamentally inaccurate and misleading information to the public and do not differentiate among tobacco products. The fact of the matter is that there are considerable differences among tobacco products—in how they are used and how they are marketed, for example. Legislation that purports to promote greater public awareness of matters related to smoking should be based on accurate, objective data.

The avowed purpose of S. 1883 is "to encourage cessation of tobacco use" among young people and to strengthen laws limiting sales of tobacco products to minors. The cigar industry firmly supports the principle that cigar smoking is an adult custom based on mature and informed decision. Objective data clearly demonstrates that cigars are not youth-oriented products. The U.S. market for cigars consists of adult males who have the maturity to make informed, responsible decisions about cigar smoking. Typically, those who smoke cigars begin to do so when they reach their 30s. Moreover, the cigar industry disapproves of advertising designed to encourage cigar smoking by those under 21 years of age. That principle is set forth in the CAA's Cigar Advertising Standards.

The average cigar smoker smokes 2 cigars per day. According to the Bureau of Alcohol, Tobacco, and Firearms, cigar sales have declined 68 percent in the past 20 years. The total advertising and promotional expenses of the cigar industry are less than one half of one percent of the figure cited in the "Findings" in S. 1883. The cigar industry spends the vast majority of these expenses on point-of-purchase materials.

In addition to our objections to the unjustified treatment of cigars in the bill, we wish to bring to the committee's attention that there is no recognized testing methodology for measuring the constituents of cigars or their smoke (as distinguished from other tobacco products). This is true internationally as well as domestically. Nevertheless, the bill would impose a requirement on cigar manufacturers to state the quantities of named constituents to a Federal agency. Absent a standardized test, the cigar data generated by this requirement would be unreliable and virtually useless.

This hearing has given us the opportunity to inform the committee why S. 1883 is not appropriate where cigars are concerned. For the reasons outlined above, we believe cigars should be excluded from the scope of the bill.

NORMAN F. SHARP
President

LETTER FROM U.S. HISPANIC CHAMBER OF COMMERCE

February 16, 1990.

The Honorable ORRIN G. HATCH,
U.S. Senate,
Senate Labor and Human Resources Committee,
835 Hart Senate Office Building,
Washington, DC 20510

SIR: In my capacity as Chairman of the Board of the U.S.Hispanic Chamber of Commerce (USHCC), and member of the Advisory Committee to the Task Force on Hispanic Affairs of the Senate Republican Conference, I would like to share with you the USHCC's written testimony on Senator Edward M. Kennedy's Tobacco Education and Health Protection Act of 1990, S. 1883.

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[1] CAA is the national trade association which represents cigar manufacturers and importers, as well as leaf dealers and other cigar industry suppliers. CAA member firms accounted for over 90 percent of the large (i.e., traditional) cigars sold in the United States in 1989. Large cigars are defined as those weighing more than three pounds per 1,000 cigars.

We strongly believe that if enacted, S. 1883 would severely impact the Hispanic print media industry which relies heavily on the support of members of the tobacco industry, hence hurting the Hispanic business community and Hispanic population at large. Furthermore, this bill would establish a dangerous precedent for censoring the advertising of other "controversial" products, and would conceivably violate the First Amendment of the U.S. Constitution as it relates to freedom of choice.

It is our hope that you will be sensitive to our concerns as you meet with the members of the Senate Labor and Human Resources Committee on Tuesday 20, 1990. Our Eastern Regional Manager, Ms. Veronica Gouabault, will be attending the public hearings and will be available to meet with you, at your convenience, to further discuss our concerns.

Sincerely,

LUPE GARCIA
Chairman of the Board

LETTER FROM SUZANNA SHERRY, PROFESSOR OF LAW

Senator EDWARD M. KENNEDY
U.S. Senate
Washington, DC 20510

DEAR SENATOR KENNEDY: You have asked for my opinion on the constitutionality of Section 955 of S. 1883, which repeals an earlier statute pre-empting State regulation of tobacco advertising. I have examined both S. 1883 and the relevant case law, and I conclude that section 955 is clearly constitutional.

Section 955 in fact raises no substantial constitutional questions, because neither a decision to repeal an earlier statute nor a decision not to pre-empt State law can be constitutionally suspect. Any constitutional questions that are raised by the restriction of tobacco advertising, moreover, are raised only with respect to potential State legislation, and thus cannot be litigated through a challenge to section 955. Finally, State legislation restricting tobacco advertising is likely to be constitutional in any case.

1. The mere repeal of a prior statute cannot be unconstitutional. *Crawford* v. *Board of Education*, 458 U.S. 527, 539 (1982); *Washington* v. *Seattle School Dist. No. 1*, 458 U.S. 457, 483 (1982); *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526, 531 n.5 (1979); *Hunter* v. *Erickson*, 393 U.S. 385, 390 n.5 (1969). In the rare cases in which a repealer statute has been held to violate the Constitution (all of which involved racial discrimination), the Court has always been careful to note that the challenged statute did more than merely repeal earlier legislation. In each case, the repealer statute in some way made racial discrimination a policy of the State, and burdened future attempts to desegregate. *See Seattle School District, supra*, 458 U.S. at 483; *Hunter* v. *Erickson, supra*, *Reitman* v. *Mulkey*, 387 U.S. 369, 376–77, 380–81 (1967). The court itself has recently described these cases as involving more than "mere repeal." *Crawford, supra*, at 538. Thus section 955 raises no constitutional questions, since it is merely a repeal of a prior statute.

2. A Congressional decision not to pre-empt State laws does not raise constitutional questions. Whether particular State laws are pre-empted is a question of statutory interpretation only. *See, e.g., Pacific Gas & Electric Co.* v. *State Energy Comm'n*, 461 U.S. 190 (1983); *New York Dept. of Social Services* v. *Dublino*, 413 U.S. 405 (1973). To argue otherwise is to suggest that the Constitution requires Congress to pre-empt State laws, which cannot be sound. Moreover, in the case of State interference with interstate commerce (which violates the Constitution in the face of Congressional silence) the Court has frequently allowed positive Congressional action to "unpre-empt" State laws interfering with such commerce. *See South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944) (invalidating some taxes on out-of-state corporations) *and Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408 (1946) (upholding such taxes on basis of intervening Federal statute authorizing State taxation; also upholding the Federal statute); *Leisy* v. *Hardin*, 135 U.S. 100 (1890) (invalidating some State restrictions on alcohol distribution) *and In re Rahrer*, 140 U.S. 545 (1891) (upholding such restrictions on basis of intervening Federal statute authorizing State regulation); *see also Western & Southern Life Ins.* v. *State Board of Equalization*, 451 U.S. 648, 653–54 (1981) (discussing these pairs of cases). Thus section 955 raises no constitutional questions, since it is merely a Congressional decision not to pre-empt

3. Congressional decisions not to pre-empt, and even Congressional decisions to adopt or incorporate State laws, are not considered grants of power to the States, but are instead merely the "remov[al] [of] an impediment to the enforcement of State laws." *In re Rahrer*, 140 U.S. 545, 564 (1891); *according, U.S.* v. *Sharpnack*, 355 U.S. 286, 294 (1958). Thus it cannot be argued that section 955 grants unconstitutional powers to the States.

4. Even if section 955 is construed as an authorization for States to enact advertising restrictions, section 955 itself cannot be challenged as unconstitutional. The Court has held that the possibility that a Federal authorizing statute might be used in such a way as to impair First Amendment freedoms cannot be litigated until the statute is actually so used. *Int'l Ass'n of Machinists* v. *Street*, 367 U.S. 740, 748–49 (1961). Moreover, the general doctrine of standing precludes plaintiffs from challenging a statute where the alleged harm to plaintiffs is the result of speculative, third-party responses to the statute. *See Allen* v. *Wright*, 468 U.S. 737 (1984) (black parents had no standing to challenge IRS regulations which allegedly would cause private schools to discriminate); *Simon* v. *Eastern Kentucky Welfare Rights Org'n*, 426 U.S. 26 (1976) (welfare rights organization had no standing to challenge IRS regulations which allegedly would cause hospitals to refrain from serving indigent patients); *Warth* v. *Seldin*, 422 U.S. 490 (1975) (low-income individuals had no standing to challenge zoning regulation that allegedly caused builders to refrain from providing low-income housing). thus because any constitutional challenge depends on legislation States might enact in the future, section 955 itself cannot be challenged. Only the subsequent State legislation might be challenged.

5. Section 955 cannot be challenged as encouraging States to enact unconstitutional legislation. The cases that have allowed governmental "encouragement" of private discrimination to constitute sufficient governmental action to come within the purview of the Fourteenth Amendment have all involved direct governmental imprimaturs on or participation in unconstitutional actions. *See Reitman* v. *Mulkey*, 387 U.S. 369 (1967) (State constitution interpreted by State court to create "right" to discriminate); *Robinson* v. *Florida*, 378 U.S. 153 (1964) (State law required segregation); *Anderson* v. *Martin*, 375 U.S. 399 (1964) (State law required that ballot identify candidates by race); *Barrows* v. *Jackson*, 346 U.S. 249 (1953) (State civil enforcement of racially restrictive covenants). Since section 955 does not in any way sanction or participate in State advertising restrictions, but merely removes a previous impediment, any constitutional flaws in subsequent State legislation cannot be imputed to section 955.

6. State legislation restricting tobacco advertising would in any case be constitutional. Commercial speech in general receives less First Amendment protection than other types of speech. The government needs only a "substantial," rather than a "compelling" interest in the regulation, and the regulation need only "directly advance" that interest. *Board of Trustees* v. *Fox*, 492 U.S. ——, 109 S.Ct. 3028 (1989); *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*, 478 U.S. 328, 340 (1986); *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n*, 447 U.S. 557 (1980). In *Posadas*, the U.S. Supreme Court upheld Puerto Rico's restrictions on casino advertising, finding such restrictions on casino advertising, finding such restrictions to be directly related to the Commonwealth's interest in the health, safety and welfare of its citizens. The Court noted that where the legislature has power to prohibit an activity altogether, it also has the option of using the less intrusive method of prohibiting advertising of that activity. *Posadas, supra*, 478 U.S. at 346. Finally, the Court indicated that cigarettes fall into the category of "products or activities deemed harmful," which can thus be subject to everything from "outright prohibition" to "legalization . . . with restrictions on stimulation of its demand." *Id.* Thus if a State statute restricting tobacco advertising were ultimately to be challenged, it would almost certainly be upheld under *Posadas*.

In conclusion, it is my opinion that section 955 is entirely constitutional. I would be happy to answer any further questions you might have.

Sincerely,

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Professor of Law

EXCERPTS FROM

Findings For The Study Of Teenage Cigarette Smoking And Purchasing Behavior

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BACKGROUND AND PURPOSE

The 1980's have witnessed a substantial change in the American Public's attitude toward smoking cigarettes. While cigarette smoking used to be an acceptable behavior, it is now becoming a habit that is being actively discouraged by a variety of health organizations, consumer groups and members of the general public. Along with this attitude shift have come some new laws which regulate smoking. There is also legislation pending at both the state and national level which would restrict smoking even further.

The public's attitude change has had an impact on the companies and organizations which are associated with the manufacturing and selling of cigarettes. One of the organizations which has been affected by this attitude change is the National Automatic Merchandising Association (NAMA), which represents the vending industry, including cigarette vending companies. NAMA is specifically concerned about proposals to ban cigarette vending machines. The rationale for such machine restriction is the allegation that many teenagers are using cigarette vending machines to obtain cigarettes. Consequently, NAMA has commissioned Response Research, an outside, independent marketing research firm to conduct a survey which will determine how and where teenagers who smoke currently obtain cigarettes.

More specifically, NAMA commissioned this 1989 study in order to obtain current objective measures of the following:

--the extent to which teenagers obtain cigarettes by purchasing them, and

--the portion of cigarette purchasing that is done through vending machines.

It is hoped that the findings presented here will assist interested organizations and lawmakers in getting factual and current data regarding the involvement of vending machines in the smoking habits of teenagers.

THE COMPLETE STUDY REFERRED TO IS RETAINED IN THE FILES OF THE COMMITTEE

The CHAIRMAN. The committee stands in recess.

[Whereupon, at 1:05 p.m., the committee stood in recess subject to the call of the Chair.]

○

END

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